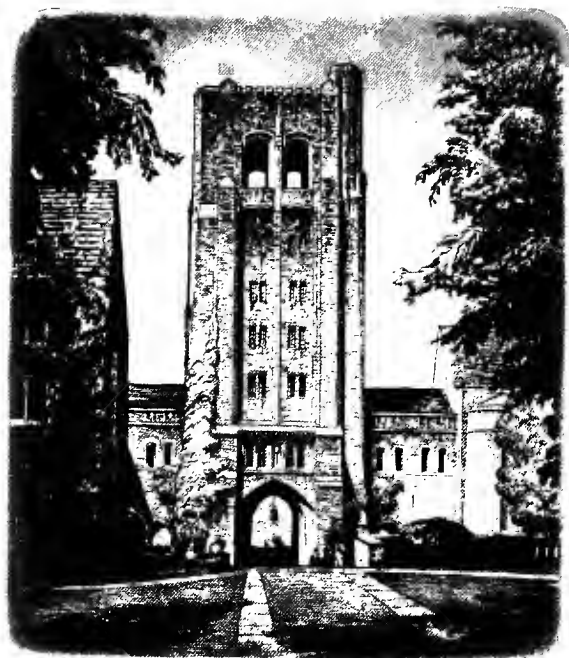


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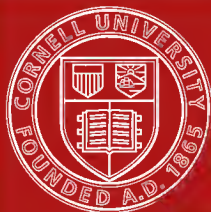
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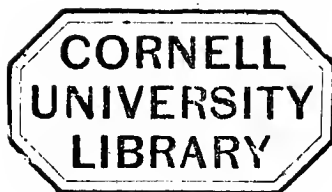
AN
ANALYTICAL DIGEST
OF THE
PENSION
AND
BOUNTY LAND LAWS,
THE
DECISIONS OF SECRETARIES AND OPINIONS
OF ATTORNEY-GENERALS THEREON,
THE
FORMS AND REGULATIONS PRESCRIBED BY THE PENSION OFFICE,
AND EXPLANATORY COMMENTS.

THE WHOLE SO ARRANGED
AS TO BE INTELLIGIBLE TO EVERY CLAIMANT.

BY
F. F. C. TRIPLETT,
LATE CHIEF CLERK OF THE PENSION OFFICE.

WASHINGTON, D. C.
1854.

6076C90.



Entered, according to Act of Congress, in the year 1854, by
F. F. C. TRIPLETT,
in the Clerk's Office of the District Court of the United States in and for
the District of Columbia.

P R E F A C E.

THE system of granting Pensions and Bounty Lands, in prescribed cases, has become so thoroughly incorporated into our policy, that even those who desire, can never expect to see, its discontinuance. Originating in 1776, every change in it down to the present time has had for its object the embracing of more numerous classes, until there is hardly a neighbourhood in the United States which does not contain one or more persons directly interested in some of the gratuities thus promised.

In most instances pensions have, at the commencement of each war, been promised for disabilities or death incurred in its prosecution; though as to Revolutionary soldiers and their widows, pensions, without regard to disabilities, were provided long after the rendition of the service. Bounty Lands, at first offered only to the file of the regular army for long terms of enlistment thereafter to be served out, have, by subsequent enactments, been extended to almost all who have borne arms in our foreign hostilities or Indian disturbances.

It was the inevitable result that a fabric thus reared, not upon any preconceived plan, but in detached parts to suit temporary purposes, should lack uniformity in its design and consistency in its details. Of the claims under the various Bounty Land laws, some amount to a fee simple, devisable and descendable to heirs general; the descent of some is restricted to specified heirs; and some die with the claimant. So contrariant are the rules governing the different classes of pensions, that an attempt to enumerate them would almost amount to a treatise on the subject.

In many instances, again, the intention of the legislature has been defeated by the employment of inadequate or improper expressions in the laws themselves, or by too narrow and rigid a construction on the part of the department charged with their execution. Congress has constantly interposed to remedy such inconveniences, until, frequently, the amendments have totally changed the operation of the original law. These amendments are, of course, in a compilation chronologically arranged, separated at wide intervals from the acts to which they refer, and are often tacked to laws upon a different class of pensions, to appropriation bills, or in other places in which an inexperienced person would never think of seeking them.

Hence has arisen that obscurity which has enveloped the Pension and Bounty Land laws as in a fog, through which no one can grope his way, unless at such labour and cost as few but professional agents would be willing to bestow upon the subject. The evils which have sprung from this state of things have been too universally felt to require that they should be dwelt upon; yet it may not be useless to glance at a few of the more prominent.

It has facilitated the perpetration of innumerable frauds against the government. Proceedings in claims of this character must, in the nature of things, always be *ex parte*, and the only possible check to interpose against the machinations of a dishonest agent, is to be found in the conversance of the magistrate before whom the proof is made, with the laws whose benefit the party is seeking. No judge, because an occasional declaration is made before him, feels it his duty to wade through the undigested map of laws, regulations, and decisions relating to the whole system, and few justices of the peace, (before whom evidence in such cases is usually taken,) have the skill, if they had the leisure, to extract from the confused heap the principles which govern any particular class of claims.

While I was in office in the Pension bureau I prosecuted to conviction a man in Vermont, who had defrauded the government under these circumstances. He found in that section many widows of revolutionary soldiers, all of whom had married within the present century, and some of them, as was notorious through the neighbourhood, but a few years before. These it was his object to have put upon the pension list. The Act of the 29th July, 1848, under which their claims were presented, offers a pension to certain widows whose marriage happened before the 2d January, 1800; but the probate judge, before whom the papers were made out, supposed that the *fact* of the marriage, and not the *date* of it, was the gist of the claim. As there could be no doubt of the *fact*, he paid no attention to the insertion of the *time*, which the agent left blank, and afterwards filled up with dates to suit his own purposes; thus making it appear that marriages which really took place in 1830 had occurred in 1799. Had the judge in this instance known the requisitions of the law, his own personal knowledge of the facts would have enabled him to arrest the frauds at the outset, and thus to have saved to the government a large amount of money. And I feel confident that those best acquainted with the subject will sustain the assertion, that of all the frauds committed in these matters, (so many of which the vigilance of the present Commissioner of Pensions has brought to light,) few would have been possible if the magistrate had been instructed in the precise nature of the rights claimed.

Then, again, Congress has frequently failed to make the exact provision it designed, from the unconversance of those who drafted the bills with the decisions which had before been rendered upon laws of a similar character. To give but one instance. The first act passed for the benefit of Revolutionary widows, (that of 4th July, 1836,) provides, that "if any person &c. *have died, leaving a widow.*" Upon this the Attorney-General decided that all were excluded whose husbands were living at the date of the passage of the act, and all who had ever re-married after the death of the husbands for whose services they claimed. Yet these phrases were repeated in most of the subsequent enactments upon Pensions and Bounty Lands; though when the attention of Congress was called to the point it uniformly vindicated its intention by removing these restrictions by express

legislation; which, however, as it did not reach those who have died in the mean time, did not fully repair the evil.

But the claimants, they for whose benefit these laws were passed, have been the chief sufferers from the want of an intelligible digest of them, with the decisions and regulations regarding them. The prosecution of these claims has grown into a regular profession, to which many intelligent gentlemen have devoted themselves, not without the expectation of a remuneration for their services. It is not once in five hundred times that any one conceiving himself or herself to have a demand against the government for a gratuity of this sort, thinks of approaching it otherwise than through one of these. If the agent be honest and trustworthy, he is satisfied with one-third or one-half of the amount recovered; if not, (as is sometimes the case,) he keeps it all. Should the party determine to make his own application, or to do it through an uninstructed friend, he is apt, after considerable expense and loss of time, to find that he is prosecuting a visionary claim; or, if it be well-founded, that he has misconceived its character, and every step he has taken has been in a wrong direction. Thus it appears that while Congress has been apparently legislating for the benefit of disabled soldiers and seamen, and the widows and orphans of those who have fallen at their posts, the profits have accrued to persons never in the contemplation of that body. If it were worth while to pass these laws, is it not equally necessary to afford claimants the means of understanding them?

That the obscurity so justly complained of in reference to them is not inherent in the subject itself, but has arisen from the want of system in the compilations heretofore made, I think the present work will demonstrate, of which I now proceed to give the plan.

Instead of arranging the laws chronologically, as has heretofore always been done, I have divided them into their *genera*, and each of these I have subdivided into the various classes which compose it. Under the act which originated each class I have introduced all the acts amending it, all the decisions settling controverted principles relating to it, and the form of declaration and regulations prescribed by the Pension Office for carrying it into effect. Thus any one by reading the leading act will find whether his case is embraced in it, and in connection he will find the changes it has undergone, the construction of the department, and the mode of procedure.

The whole system is divided into six parts, relating

I. TO REVOLUTIONARY PENSIONS.

1. The Act of 1818, which constitutes the first class of this *genus*, is never resorted to now, for reasons explained under that head.

2. The Act of 1828 gives to every officer and soldier of the continental line during the Revolution, no matter when he entered the service, provided he continued therein to the end of the war, the full pay per annum which he received in the service, never to exceed the full pay of a captain, which under no circumstances could have been more than \$600.

3. The Act of 1832 gives to all the land troops, marines, and

naval forces who served as much as six months during the Revolution—those who served less receiving nothing—a pension equal to half the pay he was entitled to during that war for each month's service, from six months up to twenty-four months, after having completed which he is entitled to no more for additional service, so that his pension can never exceed one year's pay, with the further proviso that that pay shall not be higher than the pay of a captain, which officer, in the artillery and cavalry, received \$600 per annum. Hence the first point under this act is, to establish the length of the service; the next, to fix the grade in which the service was rendered; then consult the Pay Table for the pay attached to that grade *at the time the party was in service*; multiply the number of months he served, not exceeding twenty-four, by his pay; divide the sum by 2, and that gives the pension.

These are all the acts relating to surviving officers and soldiers of the Revolution. The following relate to their widows.

4. The Act of 4th July, 1836, provides for such widows as were married before the last period of the service rendered by their husbands.

5. The Act of 7th July, 1838, provides for such widows as were married before the 1st January, 1794.

6. The Act of 2d February, 1848, provides for such widows as were married before the last-mentioned date.

These acts refer to the Act of 7th June, 1832, as their basis, and such widows only can claim under either of them whose husbands would have been entitled under said last-mentioned act.

7. The Act of 29th July, 1848, provides for widows married before the 2d day of January, 1800. But it is larger in its scope than the last-mentioned three, since under it a widow will be entitled in any case where the husband, if living, could have claimed under any existing pension law. Hence if the husband were a war's man, though he did not serve a month, or if he were an invalid revolutionary pensioner, though the amount of his service cannot be proved, she may claim the same pension he was entitled to.

8. The Act of 3d February, 1853, admits all who are widows when they apply, no matter when married.

II. ARMY INVALID PENSIONS.

These I have given under the following subdivisions:

1. Invalids of the Revolutionary war. Although the Act of 10th April, 1806, is not now in force as an original act, yet as some pensions are still drawn under it, and as it is referred to in subsequent acts as a rule, it was deemed proper to retain it.

2. Pensions for service between the Revolution and the war of 1812.

3. From the war of 1812 to the Mexican war.

4. From the commencement of the Mexican war to the present time.

To ascertain the amount of pension to which any one above the grade of a first lieutenant is entitled, you will consult the post Revolutionary Pay Table at page 233, of a first lieutenant and inferior grades, the *rate of pension* prescribed by the law given on page 95.

III. ARMY AND MILITIA WIDOWS AND ORPHANS.

Of these the laws passed from 1794 to 4th July, 1836, are administered at the office of the Third Auditor of the Treasury Department; those from 4th July, 1836, to the present time, by the Commissioner of Pensions. This distinction has never been pointed out before, in consequence of which omission applicants frequently refer their claims to the wrong office, and are doubtless sometimes improperly informed that they have no valid demand, because the clerk acting upon it is ignorant of the existence of laws he is never called upon to execute. To ascertain the rate of pension due under these laws, reference must always be had to the Pay Table, at page 233.

IV. NAVY INVALID PENSIONS, PENSIONS OF PRIVATEERS AND OF MARINES OF THE MEXICAN WAR.

The Pay Table which governs the rate of pension under this and the following title, will be found at page 235, except that the marines of the Mexican war receive the same pension as corresponding ranks in the army, given at pages 95 and 233.

V. NAVY AND MARINE WIDOWS' AND ORPHANS' PENSIONS.

This is, undoubtedly, the most complicated and perplexed division in the whole pension system; but I trust that the arrangement I have adopted will make it intelligible. The obscurity in which this class of claims has been involved, has arisen from the fact that very many of the acts on the subject not only continue pensions previously granted, but at the same time originate and bring into existence a new class. Such laws I have not only inserted under each head as acts continuing the operation of the leading acts, but have again introduced them as acts originating a new species of claims, so that it will be easy to distinguish between those which simply authorize a claimant to be put on the pension roll, those which merely allow her to receive for a longer term a pension already granted her, and those which may be used for the one purpose or the other, as occasion demands.

VI. BOUNTY LAND LAWS,

Of which it is unnecessary to say more than is said under the proper head.

I have added

VII. MISCELLANEOUS RULES, &c.

In the preparation of this work I have availed myself, not only of the large experience I acquired while an examiner, and afterwards Chief Clerk in the Pension Bureau, but of the facilities and the advice kindly afforded me by the Commissioner of Pensions, who has long felt the want, both for his office and for the public, of something of the kind, and whose appreciation of it may be found in the following letter addressed by him to Hon. W. M. Churchwell, Chairman of the Committee of Revolutionary Pensions in the present House of Representatives, published in the *Daily Globe* of the 5th August, 1854:

PENSION OFFICE, *July 12, 1854.*

SIR :—You have asked my opinion in regard to the compilation of the Pension and Bounty Land laws, decisions of secretaries and opinions of attorney-generals, now being made by F. F. C. Triplett, Esq., of this city. I have examined several parts of this work, and have had a general view of the whole, and I do not hesitate to say that the compilation, when completed, will be of great merit and usefulness. It presents the various pension laws in such an aspect as to give something of form and symmetry to our pension system, and will make the administration of those laws more intelligible. It is, in short, just such a work as the wants of the public demand, and should be generally distributed. I think it deserves the patronage of Congress. No member can serve his constituents better than to place this work within their reach. This will enable them to understand their rights, and to prosecute them without troubling their representative, as is now the general practice. It will also greatly facilitate the transaction of business in this bureau, and make it more uniform. I would commend this matter to your favourable consideration, and remain your obedient servant,

L. P. WALDO.

POSTSCRIPT.

I omitted to insert in its proper place the act granting pensions to the widows and minor children of those who perished in the San Francisco; and on the last night of the last session of Congress, after this work had been in the hands of the stereotyper, Congress passed some amendments to the acts of 1850, 1852, and 1853. These will be found in an Appendix, in page 245 of this volume.

NOTE.

The following decisions have been made under the 3d and 4th Sections of the act relating to the army, printed in the Appendix to this work.

Under Sec. 3. If the children have received the Land Warrant to which their father's service entitled them, in consequence of an existing second marriage on the part of her husband, she will have no claim to another, though she may subsequently become a widow.

A woman successively married to several husbands, each of whom rendered enough service to entitle him to a Land Warrant, can claim a separate warrant for each such service.

Under Sec. 4. This section embraces all sailors—land forces and mariners were before entitled—who served on shore in California during the existence of the Mexican war, giving to those who served less than twelve months, forty acres; to those who served one year, one hundred and sixty acres.

As the words of this section comprise only such classes as were provided for by the acts for "the enrollment of volunteers in the Mexican war," and as these acts did not embrace commissioned officers, it is doubtful whether such officers of the navy will be admitted.

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DIGEST

OF

PENSION AND BOUNTY LAND ACTS, &c.

PART I.

REVOLUTIONARY PENSIONS.

GENERAL PRINCIPLES RELATING TO ALL CLASSES OF REVOLUTIONARY PENSIONS.

No. 1.

Who may claim arrears of pension due to a deceased pensioner.

An act making provision for the payment of pensions to the widows or children of pensioners, in certain cases, and for other purposes.

SEC. 2. *And be it further enacted*, That whenever any revolutionary pensioner shall die, the Secretary of War shall cause to be paid the arrears of pension due to the said pensioner at the time of his death; and all payments, under this act, shall be made to the widow of the deceased pensioner, or to her attorney; or if he left no widow, or she be dead, to the children of the pensioner, or to their guardian, or his attorney; and if no child or children, then to the legal representatives of the deceased.

[Approved, March 2, 1839.]

An act making provision for the payment of pensions to executors or administrators of deceased pensioners in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in case any male pensioner shall die, leaving children, but no widow, the amount of pension due to such pensioner at the time of his death shall be paid to the executor or administrator on the estate of such pensioner, for the sole and exclusive benefit of the children, to be by him distributed among them in equal shares, and the same shall not

be considered as a part of the assets of said estate, nor liable to be applied to the payment of the debts of said estate, in any case whatever.

SEC. 2. *And be it further enacted*, That in case any pensioner who is a widow, shall die, leaving children, the amount of pension due at the time of her death shall be paid to the executor or administrator for the benefit of her children, as directed in the foregoing section.

SEC. 3. *And be it further enacted*, That in case of the death of any pensioner, whether male or female, leaving children, the amount of pension may be paid to any one or each of them, as they may prefer, without the intervention of an administrator. [Approved, June 19, 1840.]

Where a pensioner died, leaving a widow, who also died without demanding the pension due since the last semi-annual payment, *her* executors or administrators are alone entitled. If he left no widow, but several children, one of whom dies before the amount is paid, the legal representatives of the deceased child are entitled to his share. If he left neither widow nor child, *his* legal representatives are entitled. [Opinion of Attorney-General, February 28, 1834.]

Where there is no child, payment cannot be made to the legal representatives under the act of June 19, 1840.

[Secretary of War, April 21, 1845.]

The Act of June 19, 1840, applies to *pensioners* alone, and of pensioners, to those only who should die after its passage.

[Secretary of the Interior, March 5, 1850.]

The second section of the Act of March 2, 1829, is repealed by the Act of June 19, 1840, under which arrears of pension can only be paid when the party dies "leaving children;" if there be none, the administrator has no claim.

[Opinion of Attorney-General, July 14, 1846.]

All question about the arrears of pension seems to be explicitly disposed of by Congress, in the enactment to be found in the second section of the Act of March 2, 1829. It is therein expressly declared that, in case of the death of the widow, "the arrears of pension due to the pensioner at the time of his death," shall be paid to his children, and those arrears can only go into the hands of executors or administrators in the cases where there are neither widows nor children.

[Secretary of War, July 18, 1844.]

A pensioner under the Act of June 7, 1832, was subsequently admitted under that of July 5, 1832, and, according to the rule then in existence, the pension ceased, and what he had received as pension was deducted from the half pay due him. After his death this rule was reversed, it being then decided that the same party might receive both pension and half pay. His widow and his administrator each claimed the pension that had been withheld under the erroneous rule, and it was decided that the case was controlled by the Act of March 2, 1829, under which the widow has the prior right.

[Secretary of War, in the case of Benjamin Field.]

No. 2.

Who may claim arrears of pension due a deceased revolutionary officer or soldier, or widow, who had never been put on the pension list.

While the fractions of a pension due between the last semi-annual payment and the pensioner's death must, according to the Attorney-General's opinion of February 28, 1834, be paid to the legal representatives of the widow, if she survived him, yet arrears of pension, which had never been claimed or allowed in his lifetime, nor claimed by the widow in hers, go to *his* children.

[Secretary of War, July 18, 1844.]

The Act of June 19, 1840, applies to *pensioners* alone, that is, to those who had been actually in the receipt of a pension; and of pensioners, to those only who should die after its passage, not to those who had died before. If the party have died before the date of that act, or, if he had never received a pension, the arrears (if there be no law directing their distribution), must go, under the common law, to his or her representatives. [Secretary of the Interior, March 5, 1850.]

One entitled to a pension dies, leaving three children, one of them a married daughter; this daughter dies, and then her husband, before the pension is received; the husband's administrator is entitled to the married daughter's share. [Secretary of War, May 24, 1845.]

A claim was admitted two months after the death of the widow preferring it, who left no child, nor had her husband left any but a putative one; the amount was ordered to be paid to her administrator. [Secretary of War, case of Ann Smith, N. Y.]

Arrears of pension cannot be paid over, where neither widow nor children are in existence. [Secretary of the Interior, case of Benj. Wheeler.]

The Acts of 1828 and of 1832, are rather to be regarded as the acknowledgment of a debt equitably due to the soldiers of the Revolution, than as conferring gratuitous pensions.

[Opinion of Attorney-General, February 3, 1834.]

There has heretofore been so little system in the administration of the pension laws, that hardly anything in relation to them can be regarded as definitively settled. The question, how far a pension claim is to be considered as a vested right, transmissible to legal representatives, has been decided in contrariant ways by successive Secretaries; the latest decision, and the one which now governs, being that in the case of Benjamin Wheeler, in which the present Secretary has ruled that this right descends no further than to the widow and children. I have deemed it proper, however, to preserve all the decisions on this and other mooted questions, without offering any opinion of my own upon them. Others relating to this point will be found under the various acts hereafter given.

No 3.

The pension of a defaulter not to be withheld.

An act explanatory of the act entitled "An act to prevent defalcations on the part of the disbursing agents of the Government, and for other purposes."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act entitled "An act to prevent defalcations on the part of the disbursing agents of the Government, and for other purposes," approved the twenty-fifth of January, eighteen hundred and twenty-eight, shall not be construed to authorize the pension of any pensioner of the United States to be withheld.

[Approved, May 20, 1836.]

Since the passage of this act, money withheld under the act of January 25, 1828, (which provides, "That no money hereafter appropriated to any person, for his compensation, who is in arrears to the United States, shall be paid him, until such person shall have accounted for, and paid into the Treasury, all sums for which he shall be liable,") ought to be refunded to the pensioner.

[Opinion of Attorney-General, June 27, 1836.]

No. 4.

Can an overpayment to a pensioner be retained out of his pension?

Where a pensioner has been allowed more than his services entitled him to, no portion of the money thus improperly paid him can be retained on a readjustment of his pension.

[Opinion of Attorney-General, July 6, 1836.]

Except where the overpayment has been obtained by fraud, the allowance of a higher pension than the party's services entitled him to, ought to be regarded as overpayment by mistake, constituting a debt from the pensioner to the United States, and consequently, under the equity of the Act of May 20, 1836, not to be retained out of the pension properly due him.

[Secretary of War, March 13, 1837.]

OFFICE OF THE ATTORNEY-GENERAL, July 2, 1842.

SIR: In the matter of James Palmer's pension, considered as a matter unprejudiced by previous decisions in this office or in yours, I should be of opinion that the deduction ought to be made. In all cases of mistake of fact, there is a *condictio indebiti* even in favor of an individual, much more of a government, which is, on strict principles, not estopped even by a judgment of a court in case of subsequently discovered evidence. I do not conceive there would be, on general principles, any objections to setting off a demand of the government against a pensioner arising out of a separate cause. (See *Priddy vs. Rose*, 3 Mer., 84, especially at p. 104.) But the statute of 1836 (May 20) has, as far as it goes, certainly altered the law in this respect. The case here, however, is not a defalcation in a disbursing officer, or even a collateral demand. It involves merely an adjustment, on correct principles, of the very account on

which the claim of the pensioner arises. If he have been paid already by anticipation, what equity is there in the present demand? How can he keep what is enough to pay his whole claim, and yet insist on having more?

Thus stands the case between him, as creditor, and the government, as debtor. But there is another view of the subject; and that is the one taken by the authors of the above cited law of 1836, and by Mr. Butler, when acting as Secretary of War. It is this: Pensions are given to maintain decently a person entitled to public bounty for past service, and have no reference whatever to any present relation between government and the beneficiaries. This is plausible; and the act of 1836 certainly gives it countenance." But I cannot accede to the general principle. I have cited authority to show that pensions at common law are liable to set-off. Beyond the scope of the exception in the act of 1836, the common law is still unchanged. But that statute only applies to defalcations in disbursing officers, and can, by no fair construction, be made to affect a settlement in such an account. Suppose the pensioner to have invested, and still to possess, the overplus paid him; can he conscientiously keep it? The maxim is universal, *neminem alieno damno ditiores esse oportet*. Still, if Mr. Butler's opinion has been acted on, and has grown into settled practice, I would not advise you to disturb it now.

H. S. LEGARE.

TO THE SECRETARY OF WAR.

Mr. Butler's opinion is still followed.

No. 5.

Special Acts.

One put on the pension list by a special act of Congress died before the passage of the Act; his children are entitled.

[Opinion of Attorney-General, May 25, 1840.]

An Act of Congress places a person on the pension list at \$80 per annum, "to be paid as other pensioners;" the pension commences from the date of the Act.

[Secretary of War, case of George Rush, Va.]

No. 6.

Limitation.

The fourth section of the Act of March 3, 1845, making appropriations for the civil and diplomatic expenses of the Government, (which provides "that no accounts which have been adjusted by the accounting officers of the Treasury, shall be reopened without authority of law, nor shall the accounting officers of the Treasury act upon any account which shall not be presented within six years from the date when the claim first existed, unless the person having the claim was an infant, feme covert or lunatic, and those within six years after the removal of the disability: *Provided*, That this section shall not apply to cases where special acts have passed or shall pass, for the relief of individuals,") does not apply to an unallowed claim for a pension.

If the pensioner, after being placed upon the pension list, shall fail to apply for his semi-annual payments for six years, then his claim is barred, and he must apply to Congress. The statute in such cases begins to run from the time of his failing to apply for the semi-annual payment, not from the date of his certificate.

[Opinion of Attorney-General, April 22, 1845.]

Nor does this section apply to claims under the Act of July 5, 1832.

[Ibid.]

No. 7.

Effect of a legislative opinion on the validity of a claim.

ATTORNEY-GENERAL'S OFFICE, March 27, 1849.

SIR: In the case of the representatives of Churchill Gibbs, referred to this office, I am of opinion that, both Houses of Congress having, on the 12th of January, 1848, resolved that the claim was provided for by the act of July 5, 1832, and the House of Representatives having done so again at the last session, after the executive department had, more than once, maintained a different doctrine, I am of opinion that a proper deference to the legislature demands that their construction should be adopted. That a claim should be rejected by the Executive because Congress had not, in its opinion, provided for it, and the claimant be referred to the latter for relief, and, going there, be referred back to the Executive by Congress, because, in their opinion, they had provided for it by the existing laws, and that it should still be disallowed, would, in my opinion, be a reproach upon the justice of the government, which it is not only in the power, but the duty, of the Executive to prevent. Without deciding, therefore, upon the first of the two questions submitted, I am very clear that, upon the ground included within the second question, the claim should be liquidated.

REVERDY JOHNSON.

HON. THOMAS EWING, *Secretary of the Interior.*

No. 8.

Within what time a case may be reopened after a Secretary's decision on it.

A Secretary should not reopen a case which has been decided by one of his predecessors, unless in such time as a writ of error might be had at common law, or a bill of review in equity; that is, within five years.

[Secretary of the Interior, case of Mrs. Hodges.]

No. 9.

Inconsistent Offices.

Inconsistent offices, the duties of which could not be performed by the same person at the same time, cannot be united in the allowance of a pension.

[Secretary of the Interior, case of Elisha Hubbard.]

No. 10.

Process where a certificate is illegally withheld from a pensioner.

Where a pensioner has pledged his certificate for a debt, the Secretary should not issue a new one to him. But if satisfactory

evidence is adduced to show that it is in the hands of a third party, and has been demanded and its delivery refused, payment should be made without its production.

[Opinion of Attorney-General, October 27, 1832.]

No. 11.

Evidence of service as a commissioned officer.

Service in a military grade which is usually held under a commission, even though the party never received one, or it did not date back to the commencement of his service, entitles to the pension of that grade.

[Secretary of War, January 15, 1833.]

No. 12.

Proceeding where the claimant is insane, &c.

On consultation with the Attorney-General, he is of opinion that, *in all cases* of insanity or of mental infirmity destroying the faculties, the *statement* of the nearest relatives of a person claiming a pension may be received under oath, recapitulating his own account of his *services* as given prior to such incapacity; and that if such statement would have been *sufficient* to warrant the pension, if made by the party himself, it shall be deemed sufficient in those cases.

Let this be the rule.

LEWIS CASS.

No. 13.

Desertion.

Desertion forfeits all rights to a pension.

[Secretary of War, June 27, 1843.]

Where a prisoner of war voluntarily went into civil employment in the enemy's country, and remained there till the war was over, he is to be regarded as a deserter, and consequently is precluded from the benefit of the pension acts.

[Secretary of War, August 31, 1840.]

No. 14.

May a declaration be made before a Justice of the Peace?

When a Justice of the Peace is a member of a court of record, a declaration made before him is sufficient.

[Secretary of the Interior, July 10 and 13, 1849.]

A Justice of the Peace is a member of a court of record only while the court is sitting.

[Secretary of the Interior, case of Sarah Cox.]

The latter decision, which is the one now in force, overturns the former.

No. 15.

Rate of pension.

The rate of pension is to be based alone upon the pay allowed by law.

[Secretary of the Interior, April 4, 1849.]

No. 16.

Evidence.

The fact that a party received Bounty Land from the State of Georgia under its law granting land to those "who remained at home and did their duty," &c., after the reduction of Savannah, is no evidence of actual service.

[Secretary of War, December 18, 1835.]

No. 17.

End of the Revolutionary war.

The Revolutionary war ended in November, 1783.

[Secretary of War, case of Susanna Holbrook.]

On this subject, see the Organization of the Revolutionary Army post.

No. 18.

Where administration on a pensioner's estate should be had.

DEPARTMENT OF THE INTERIOR, September 12, 1849.

SIR: In the claim of the administrator of Mary Barbee, I am of opinion that the letters of administration should be taken out at the place of domicile of the deceased.

This is not only the course legally to be pursued, but is eminently proper in the class of cases to which this belongs, as any other would subject the department to liability to fraud and imposture. Of course no imputation of this kind is expressed of the present case; but the rule is one, the observance of which should be enforced in all cases.

In addition to the letter of administration taken out at the place of the last domicile, there must be strict proof that the person so represented was the same whose husband performed this service or drew the pension. If the place of her or his residence was changed after he performed the service or died, being a pensioner, that must also be proved, so as to leave no doubt of the personal identity. The papers are herewith returned.

T. EWING.

To the COMMISSIONER OF PENSIONS.

No. 19.

Pension Acts apply only to those living at their passage.

When any act or resolution passes, enlarging the operation of a previous statute, it is held to apply only to officers, soldiers and widows living at the date of its passage. For example: it was decided that the Act of July 4, 1836, did not embrace such widows whose husbands were living at that date; the resolution of July 7, 1838, removed this restriction: if the husband was living July 4, 1836, but died immediately after, and the widow died July 6, 1838, her children can claim nothing; but if she died July 7, 1838, they may claim, she having been otherwise entitled.

REVOLUTIONARY PENSION ACTS.

FOR OFFICERS AND SOLDIERS OF THE REVOLUTION.

No. 1.

ACT OF MARCH 18, 1818.

An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every commissioned officer, non-commissioned officer, musician, and private soldier, and all officers in the hospital department and medical staff, who served in the war of the revolution until the end thereof, or for the term of nine months, or longer, at any period of the war, on the continental establishment; and every commissioned officer, non-commissioned officer, mariner, or marine, who served at the same time, and for a like term, in the naval service of the United States, who is yet a resident citizen of the United States, and who is, or hereafter, by reason of his reduced circumstances in life, shall be in need of assistance from his country for support, and shall have substantiated his claim to a pension in the manner hereinafter directed, shall receive a pension from the United States: if an officer, of twenty dollars per month during life; if a non-commissioned officer, musician, mariner, marine, or private soldier, of eight dollars per month during life: *Provided,* No person shall be entitled to the provisions of this act until he shall have relinquished his claim to every pension heretofore allowed him by the laws of the United States.

SEC. 2. *And be it further enacted,* That, to entitle any person to the provisions of this act, he shall make a declaration, under oath or affirmation, before the district judge of the United States of the district, or before any judge or court of record of the county, State, or Territory in which the applicant shall reside, setting forth, if he belonged to the army, the company, regiment, and line to which he belonged; the time he entered the service, and the time and manner of leaving the service; and, in case he belonged to the navy, a like declaration, setting forth the name of the vessel and particular service in which he was employed, and the time and manner of leaving the service, and shall offer such other evidence as may be in his power; and on its appearing to the satisfaction of the said judge, that the applicant served in the revolutionary war as aforesaid, against the common enemy, he shall certify and transmit the testimony in the case, and the proceedings had thereon, to the Secretary for the Department of War, whose duty it shall be, if satisfied the applicant comes under the provisions of this act, to place such officer, musician,

mariner, marine, or soldier, on the pension list of the United States, to be paid in the same manner as pensions to invalids who have been placed on the pension list are now paid, and under such restrictions and regulations, in all respects, as are prescribed by law.

SEC. 3. *And be it further enacted*, That every pension, by virtue of this act, shall commence on the day that the declaration under oath or affirmation, prescribed in the foregoing section, shall be made.

SEC. 4. *And be it further enacted*, That, from and after the passage of this act, no sale, transfer, or mortgage, of the whole or any part, of the pension payable in pursuance of this act, shall be valid; and any person who shall swear or affirm falsely in the premises, and be thereof convicted, shall suffer as for wilful and corrupt perjury.

[Approved, March 18, 1818.]

An act in addition to an act entitled "An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war," passed March 18, 1818.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no person who now is, or hereafter may be, placed on the pension list of the United States, by virtue of the act entitled "An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war," passed on the eighteenth day of March, one thousand eight hundred and eighteen, shall, after the payment of that part of the pension which became due on the fourth day of March, one thousand eight hundred and twenty, continue to receive the pension granted by the said act, until he shall have exhibited to some court of record, in the county, city, or borough, in which he resides, a schedule, subscribed by him, containing his whole estate and income, (his necessary clothing and bedding excepted,) and shall have (before the said court, or some one of the judges thereof,) taken and subscribed, and produced to the said court, the following oath or affirmation, to wit: I, A. B., do solemnly swear, or affirm, (as the case may be,) that I was a resident citizen of the United States on the eighteenth day of March, one thousand eight hundred and eighteen, and that I have not, since that time, by gift, sale, or in any manner whatever, disposed of my property, or any part thereof, with intent thereby so to diminish it as to bring myself within the provisions of an act of Congress, entitled "An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war," passed on the eighteenth day of March, one thousand eight hundred and eighteen; and that I have not, nor has any person in trust for me, any property, or securities, contracts, or debts, due to me; nor have I any income, other than what is contained in the schedule hereto annexed and by me subscribed: Nor until such person shall have delivered or caused to be delivered, to the Secretary of War, a copy of the aforesaid schedule and oath or affirmation, certified by the clerk of the court to which the said schedule was delivered, together with the opinion

of the said court, also certified by their clerk, of the value of the property contained in the said schedule: *Provided*, That, in every case in which the pensioner may be insane, or incapable of taking an oath, the court may receive the said schedule, without the aforesaid oath or affirmation, from the committee, or other person authorized to take care of such person.

SEC. 2. *And be it further enacted*, That the original schedule and oath or affirmation shall be filed in the clerk's office of the court to which the schedule and oath or affirmation aforesaid shall be exhibited; and any person who shall swear or affirm falsely in the premises, and be thereof convicted, shall suffer as for wilful and corrupt perjury.

SEC. 3. *And be it further enacted*, That, on the receipt of the copy of the schedule and oath or affirmation aforesaid, it shall be the duty of the Secretary of the War Department to cause to be struck from the list of pensioners of the said act, the name of such person, in case the said person shall not, in his opinion, be in such indigent circumstances as to be unable to support himself without the assistance of his country: *Provided*, That every person who shall have been placed on the pension list in consequence of disability from wounds received in the revolutionary war, and who shall have relinquished such pension in order to avail themselves of the benefit of the provisions of the act to which this is an amendment, who, by virtue of this section may be stricken from the pension list, shall be forthwith restored to the pension so relinquished. [Approved, May 1, 1820.]

An act supplementary to the acts to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of War be, and he is hereby authorized and required to restore to the list of pensioners the name of any person who may have been, or hereafter shall be, stricken therefrom, in pursuance of the act of Congress, passed the first day of May, one thousand eight hundred and twenty, entitled "An act in addition to an act, entitled 'An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war,' " passed the eighteenth day of March, one thousand eight hundred and eighteen, if such person, so stricken from the list of pensioners, has heretofore furnished, or hereafter shall furnish, evidence, in pursuance of the provisions of said act, to satisfy the Secretary of War that he is in such indigent circumstances as to be unable to support himself without the assistance of his country, and that he has not disposed of, or transferred, his property, or any portion thereof, with a view to obtain a pension.

SEC. 2. *And be it further enacted*, That when any person coming within the provisions of the acts to which this is supplementary shall, by reason of bodily infirmity, be unable to attend in court to make his schedule, and furnish the evidence by said acts required, it shall

be lawful for any judge or justice of a court of record in the district, city, county, or borough, in which such person resides, to attend at his place of abode, and receive his schedule and oath or affirmation; and the said judge or justice shall certify that said applicant was, from bodily infirmity, unable to attend such court; which schedule and oath or affirmation, and certificate, shall, by said judge or justice, be produced in the court of which he is judge; and the opinion of said court, of the value of the property contained in said schedule, shall be entered thereon, and certified by the clerk of said court; and such schedule shall be valid for all the purposes contemplated by the acts aforesaid.

SEC. 3. *And be it further enacted*, That no pension hereafter to be allowed on claims or schedules heretofore filed under the act or acts to which this act is a supplement, or under the provisions of this act, shall commence before the passage thereof; and all other pensions hereafter to be allowed, under the acts aforesaid, shall commence from the time of completing the proof.

[Approved, March 1, 1823.]

Although the act of 1818 and its supplemental acts are still in legal existence, yet the act of June 7, 1832, being in all cases more beneficial to those not yet placed on the pension list, no applications are ever made under the former now, and it is deemed useless to give any form or regulations relating to it.

No. 2.

ACT OF MAY 15, 1828. •

An act for the relief of certain surviving officers and soldiers of the army of the revolution.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That each of the surviving officers of the army of the revolution, in the continental line, who was entitled to half pay by the resolve of October twenty-first, seventeen hundred and eighty, be authorized to receive, out of any money in the Treasury not otherwise appropriated, the amount of his full pay in said line, according to his rank in the line, to begin on the third of March, one thousand eight hundred and twenty-six, and to continue during his natural life: *Provided*, That, under this act, no officer shall be entitled to receive a larger sum than the full pay of a captain in said line.

SEC. 2. *And be it further enacted*, That whenever any of said officers has received money of the United States, as a pensioner, since the third day of March, one thousand eight hundred and twenty-six, aforesaid, the sum so received shall be deducted from what said officer would otherwise be entitled to under the first section of this act; and every pension to which said officer is now entitled shall cease after the passage of this act.

SEC. 3. *And be it further enacted*, That every surviving non-commissioned officer, musician, or private, in said army, who enlisted therein for and during the war, and continued in service until its termination, and thereby became entitled to receive a reward of eighty dollars, under a resolve of Congress, passed May fifteenth, seventeen hundred and seventy-eight, shall be entitled to receive his full monthly pay in said service, out of any money in the Treasury not otherwise appropriated; to begin on the third day of March, one thousand eight hundred and twenty-six, and to continue during his natural life: *Provided*, That no non-commissioned officer, musician, or private, in said army, who is now on the pension list of the United States, shall be entitled to the benefits of this act.

SEC. 4. *And be it further enacted*, That the pay allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer or soldier entitled thereto, or to their authorized attorney, at such places and days as said Secretary may direct; and that no foreign officer shall be entitled to said pay, nor shall any officer or soldier receive the same, until he furnish to said Secretary satisfactory evidence that he is entitled to the same in conformity to the provisions of this act; and pay allowed by this act shall not, in any way, be transferable, or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer or soldier entitled to the same by this act.

SEC. 5. *And be it further enacted*, That so much of said pay as accrued by the provisions of this act before the third day of March, eighteen hundred and twenty-eight, shall be paid to the officers and soldiers entitled to the same, as soon as may be, in the manner and under the provisions before mentioned; and the pay which shall accrue after said day shall be paid semi-annually, in like manner, and under the same provisions. [Approved, May 15, 1828.]

[The resolution of October 21, 1780, referred to in the first section of this act, is in the following words:

Resolution — In Congress, October 21, 1780.

Resolved, That the officers who shall continue in the service to the end of the war, shall also be entitled to half pay during life, to commence from the time of their reduction.

The resolution of May 15, 1778, referred to in the third section of this act, is as follows:

That every non-commissioned military officer and soldier, who hath enlisted, or shall enlist, into the service of these States, for and during the war, and shall continue therein to the end thereof, shall be entitled to receive the further reward of eighty dollars, at the expiration of the war.]

Under the second section of this act, any money which the officer had received as a pension was to be deducted from the amount to which he now became entitled. Invalid pensioners were relieved from this deduction by the following act:

An act to amend the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the second section of the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution," approved the fifteenth of May, one thousand eight hundred and twenty-eight, shall not be construed to embrace invalid pensioners; and that the pension of invalid soldiers shall not be deducted from the amount receivable by them under the said act.

[Approved, May 31, 1830.]

The preceding act relieved officers alone, an omission which was supplied by the following:

An act to amend the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the third section of the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution," approved the fifteenth day of May, one thousand eight hundred and twenty-eight, shall not be construed to embrace invalid pensioners; and that the pension of invalid soldiers shall not be deducted from the amount receivable by them under the said act.

[Approved, July 14, 1832.]

PRINCIPLES AND DECISIONS UNDER THE ACT OF 1828.

No. 1.

This act includes only those who were embraced by the resolution of October 21, 1780. This resolution, as explained by the resolutions of November 28, 1780, and January 17, 1781, extends to field and line officers, major-generals, brigadier-generals, directors of the hospital, chief physicians and surgeons of the army and hospital, hospital physicians, surgeons, purveyors and apothecaries, and regimental surgeons. All other staff-officers are excluded from it.

No. 2.

A surgeon, no matter what his actual pay may have been, cannot, under this act, receive a greater pension than a captain of infantry—\$480 per annum.

No. 3.

The pension granted by the act has always been deemed a vested right, payable, after the death of the party, first, to the widow; next, to the children; and, in default of these, to administrators or executors.

No. 4.

The provisions of the act of May 31, 1830, (and, of course, of

July 14, 1832,) are altogether prospective, and do not authorize the repayment of the invalid pension money which may already have been deducted by the Department under the act of 1828.

[Opinion of the Attorney-General, June 10, 1830.]

FORM OF DECLARATION.

The form given under the act of June 7, 1832, may be used in applications under this, changing, of course, the title of the act in the declaration, and noting at the end whether the applicant ever received, if an officer, his commutation; if a non-commissioned officer or private, his reward of eighty dollars.

No. 3.

ACT OF JUNE 7, 1832.

An act supplementary to the "Act for the relief of certain surviving officers and soldiers of the revolution.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the surviving officers, non-commissioned officers, musicians, soldiers, and Indian spies, who shall have served in the continental line, or State troops, volunteers, or militia, at one or more terms, a period of two years, during the war of the revolution, and who are not entitled to any benefit under the act for the relief of certain surviving officers and soldiers of the revolution, passed the fifteenth day of May, eighteen hundred and twenty-eight, be authorized to receive, out of any money in the treasury not otherwise appropriated, the amount of his full pay in the said line, according to his rank, but not exceeding in any case the pay of a captain in the said line; such pay to commence from the fourth day of March, one thousand eight hundred and thirty-one, and shall continue during his natural life; and that any such officer, non-commissioned officer, musician, or private, as aforesaid, who shall have served in the continental line, State troops, volunteers, or militia, a term or terms in the whole less than the above period, but not less than six months, shall be authorized to receive out of any unappropriated money in the treasury, during his natural life, each according to his term of service, an amount bearing such proportion to the annuity granted to the same rank for the service of two years, as his term of service did to the term aforesaid; to commence from the fourth day of March, one thousand eight hundred and thirty-one.

SEC. 2. *And be it further enacted,* That no person, receiving any annuity or pension under any law of the United States providing for revolutionary officers and soldiers, shall be entitled to the benefits of this act, unless he shall first relinquish his further claim to such pension; and in all payments under this act, the amount which may have been received under any other act, as aforesaid, since the date

at which the payments under this act shall commence, shall first be deducted from such payment.

SEC. 3. *And be it further enacted*, That the pay allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer, non-commissioned officer, musician, or private entitled thereto, or his or their authorized attorney, at such places and times as the Secretary of the Treasury may direct; and that no foreign officer shall be entitled to said pay, nor shall any officer, non-commissioned officer, musician, or private, receive the same until he furnish the said Secretary satisfactory evidence that he is entitled to the same, in conformity to the provisions of this act; and the pay hereby allowed shall not be in any way transferable or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer, non-commissioned officer, musician, or soldier entitled to the same.

SEC. 4. *And be it further enacted*, That so much of the said pay as accrued before the approval of this act, shall be paid to the person entitled to the same as soon as may be, in the manner and under the provisions above mentioned; and the pay which shall accrue thereafter, shall be paid semi-annually, in the manner above directed; and, in case of the death of any person embraced by the provisions of this act, or of the act to which it is supplementary, during the period intervening between the semi-annual payments directed to be made by said acts, the proportionate amount of pay which shall accrue between the last preceding semi-annual payment and the death of such person, shall be paid to his widow, or if he leave no widow, to his children.

SEC. 5. *And be it further enacted*, That the officers, non-commissioned officers, mariners, or marines, who served for a like term in the naval service, during the revolutionary war, shall be entitled to the benefits of this act, in the same manner as is provided for the officers and soldiers of the army of the revolution.

The second section of this act required the deduction of every description of pension-money the party might have received, but the following act excepted from this requirement invalid pensions:—

[Approved, June 7, 1832.]

An act to amend an act entitled "An act supplementary to an act for the relief of certain surviving officers and soldiers of the revolution."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the second section of the act entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," approved the 7th day of June, one thousand eight hundred and thirty-two, shall not be construed to embrace invalid pensioners; and that the pensions of invalid soldiers shall not be deducted from the amount receivable by them under the said act.

[Approved, February 19, 1833.]

PRINCIPLES AND DECISIONS UNDER THE ACT OF 1832.

No. 1.

Who may claim arrears under it.

An act granting half pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes.

SEC. 2. *And be it further enacted*, That if any officer, non-commissioned officer, musician, soldier, Indian spy, mariner, or marine, whose service during the revolutionary war was such as is specified in the act passed the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died since the fourth day of March, eighteen hundred and thirty-one, and before the date of said act, the amount of pension which would have accrued from the fourth day of March, eighteen hundred and thirty-one, to the time of his death, and become payable to him by virtue of that act, if he had survived the passage thereof, shall be paid to his widow; and if he left no widow, to his children, in the manner prescribed in the act hereby amended. [Approved, July 4, 1836.]

If a soldier dies between March 4, 1831, and June 7, 1832, leaving a widow, who also dies before June 7, 1832, the arrears go to his children, not to hers. [Opinion of Attorney-General, April 13, 1847.]

No. 2.

Who are embraced by it.

Its benefits are not confined to resident American citizens; but are extended to all who served in the revolutionary war the requisite length of time, except *foreign officers*, that is, foreigners who held commissions in the American service.

[Opinion of Attorney-General, October 27, 1832.]

A foreigner, commissioned and serving in the American army, is entitled to a pension under this act.

[Secretary of War, case of P. S. Duponceau.]

This act does not embrace privateers.

[Opinion of Attorney-General, July 21, 1842.]

A pensioner under the act of 1828 may relinquish the benefits of that act and claim under this, if it be more beneficial to him.

[Opinion of Attorney-General, May 18, 1833.]

No. 3.

Pension regulated by length of service in each rank.

If an applicant served in two or more grades, his pension is not to be computed for the whole time of his service according to the pay received in the highest rank, unless that time amounted to two years. What is lacking of that period shall be estimated by the pay he received in the inferior grade.

[Opinion of Attorney-General, October 27, 1832.]

No. 4.

A pensioner cannot relinquish under the act of 1818 to claim under the acts of June 7, 1832, and the 19th February, 1833.

Where an invalid pensioner of the revolution relinquished his invalid pension in order to obtain the benefit of the act of March 18, 1818, he cannot now, since the passage of the acts of June 7, 1832, and of February 19, 1833, relinquish under the act of 1818, and claim to be placed under the act of 1832, and at the same time to be restored to the benefit of his invalid pension. By the terms "invalid pensioners" and "invalid soldiers," Congress meant only those who are now found on the invalid pension list, in which condition such persons are not; nor is there any provision for their being transferred from the act of 1818 to the invalid roll.

[Opinion of Attorney-General, February 27, 1834.]

No. 5.

Imprisonment to be allowed as service.

Resolution in relation to the execution of an act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the execution of the act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution, approved June seventh, one thousand eight hundred and thirty-two, the time of imprisonment as a prisoner of war shall be taken and computed as a part of the period of service.

[Approved, July 14, 1832.]

The time during which a party was on parole is also allowed.

No. 6.

Service in certain wars allowed to the definitive treaty of peace.

A Resolution in relation to the execution of the act supplementary to the "Act for the relief of certain surviving officers and soldiers of the revolution."

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the execution of the act supplementary to the "Act for the relief of certain surviving officers and soldiers of the revolution," approved June seventh, one thousand eight hundred and thirty-two, wherever it shall be made to appear that any applicant for a pension under said act entered the army of the revolution, in pursuance of a contract with the Government made previous to the eleventh day of April, one thousand seven hundred and eighty-three, and continued in service until after that period, it shall be the duty of the Secretary of War to compute the period of any such applicant's service, from the time he then entered the army, and until the date of the definitive treaty of peace, and to allow him a pension accordingly.

[Approved, March 2, 1833.]

FORM OF DECLARATION AND REGULATIONS.

The following regulations have been adopted by the Secretary of War, for carrying into effect the Act of Congress, passed June 7, 1832, entitled "An act supplementary to 'An act for the relief of the surviving officers and soldiers of the Revolution.'"

This law has been construed to extend as well to the line as to every branch of the Staff of the Army, and to include under the terms "Continental Line," "State Troops," "Militia," and "Volunteers," all persons enlisted, draughted, or who volunteered, and who were bound to military service.

Four general classes of cases are embraced in this law :

1. The Regular Troops.
2. The State Troops, Militia and Volunteers.
3. Persons employed in the Naval Service.
4. Indian Spies.

As rolls of the regular troops in the Revolutionary War exist in this Department, all persons claiming the benefit of this law as officers, non-commissioned officers, musicians, or privates, will, in the first instance, make application by transmitting the following declaration, which will be made before a Court of Record of the County where such applicant resides. And every Court having by law a seal and Clerk is considered a Court of Record.

DECLARATION.

In order to obtain the benefit of the Act of Congress of the 7th June, 1832.

State, Territory, or District of } ss.
County of

On this day of personally appeared in open Court before the Court of A. B. a resident of in the County of and State, Territory, or District of aged years, who being first duly sworn according to law, doth on his oath make the following declaration, in order to obtain the benefit of the provision made by the act of Congress, passed June 7th, 1832. That he enlisted in the Army of the United States in the year with and served in the regiment of the line, under the following officers :

[Here set forth the names and rank of the Field and Company Officers ; the time he left the service ; (and if he served under more than one term of enlistment, he must specify the particular period, and rank and names of his officers ;) the town or county and State, in which he resided when he entered the service ; the battles, if any, in which he was engaged, and the country through which he marched.]

He hereby relinquishes every claim whatever to a pension or annuity, except the present ; and he declares that his name is not on the Pension Roll of any Agency in any State, or (if any) only on that of the Agency in the State of

Sworn to and subscribed the day and year aforesaid.

A. B.

[And then will follow the Certificate of the Court.]

And the said Court do hereby declare their opinion that the abovenamed applicant was a revolutionary soldier, and that he served as he states.

I of the Court of do hereby certify, that the foregoing contains the original proceedings of the said Court in the matter of the application of for a pension.

In testimony whereof, I have hereunto set my hand and seal of office this day of &c.

If, on examination of the proper record, the names of applicants, making such declaration, cannot be found, they will receive detailed

instructions respecting the nature and form of the testimony they must produce to secure their being placed on the Pension Roll. As the presumption will, in such case, be against the applicants, in consequence of the omission of their names in the muster-rolls, they will be required to furnish, as near as may be, the same evidence as has heretofore been required by the regulations and practice adopted for carrying into effect the act of Congress of March 18, 1818, and the acts supplementary thereto; with such relaxations as have been from time to time sanctioned by the Department, on account of the rapid decrease of the survivors of the Revolutionary Army, and the consequent difficulty of procuring direct positive testimony in every case.

Whenever an officer or non-commissioned officer is now in the receipt of a pension, he should make application, if entitled to the benefit of this act, by letter merely, setting forth his rank, and the regiment, corps, or vessel, in which he served, and his present place of residence. His pension certificate must accompany his letter.

In those cases where the applicants have once been on the Pension Roll, under the act of March 18, 1818, and have been dropped therefrom on account of property, or from any other reason; or where application has been made under the act of May 15, 1828, and the evidence of his service is in the Departments; or having made application and proof of service, and having been rejected, instead of the above declaration, they will make a statement, setting forth, under oath, their having been previously on the Pension Roll, and their having been struck from the same, showing their rank, the regiment, corps, or vessel, in which they served, their present place of residence, and their place of residence when the first application was made, or of their application under the act of May 15, 1828.

In a case where a claimant may make personal application at this Department, and can produce satisfactory proof of service, and of his identity also, at the seat of government, he may make his declaration before a justice of the peace.

The case of the State Troops, Volunteers, and Militia, is different. There are in the Department no rolls of the State Troops, except those of Virginia.

Applicants who served in the State Troops of Virginia will be required to produce the same proof as is prescribed for those who served upon the Continental Establishment. But, with respect to the other State Troops and Militia, there is no record to advert to, and no presumption to be rebutted. The nature of the case, therefore, demands a different rule of proceeding.

Every applicant who claims a pension by virtue of service in the State Troops, Volunteers, or Militia, except as is above provided, will make and subscribe the following declaration:

DECLARATION.

In order to obtain the benefit of the Act of Congress, passed June 7, 1832.

State, Territory, or District of }
County of } ss.

On this day of personally appeared in open Court, before the Court of now sitting, A. B., a resident of in the County of

..... and State, Territory, or District of aged years, who being first duly sworn according to law, doth on his oath, make the following declaration, in order to obtain the benefit of the act of Congress, passed June 7, 1832.

That he entered the service of the United States under the following named officers, and served as herein stated :

[Here set forth the names and rank of the Field and Company officers ; the day (if possible) and the month and year when the claimant entered the service, and the time when he left the same ; (and, if under more than one engagement, he must specify the particular periods, and the rank and names of his officers ;) the town, the county, or State, in which he resided when he entered the service ; whether he was drafted, was a volunteer or substitute ; the battles, if any, in which he was engaged ; the country through which he marched ; the continental regiments or companies with which he served ; and the names of some of the regular officers whom he knew, together with such further particulars as may be useful in the investigation of his claim ; and also, if the facts be so, that he has no documentary evidence, and that he knows of no person, whose testimony he can procure, who can testify to his service.]

He hereby relinquishes every claim whatever to a pension or annuity, except the present, and declares that his name is not on the Pension Roll of the Agency of any State, or (if any) only on that of the Agency of the State of

Sworn to and subscribed the day and year aforesaid.

C. D.

And then will be annexed the following certificate :

We, A. B., a clergyman, residing in the and C. D., residing in (the same,) hereby certify, that we are well acquainted with who has subscribed and sworn to the above declaration : that we believe him to be years of age ; that he is reputed and believed, in the neighborhood where he resides, to have been a soldier of the Revolution, and that we concur in that opinion.

Sworn to and subscribed the day and year aforesaid.

And then will follow the certificate of the Court :

And the said Court do hereby declare their opinion after the investigation of the matter, and after putting the interrogatories prescribed by the War Department, that the above named applicant was a Revolutionary Soldier, and served as he states. And the Court further certifies, that it appears to them that A. B., who has signed the preceding certificate, is a clergyman, resident in the and that C. D., who has signed the same, is a resident in the and is a credible person, and that their statement is entitled to credit.

I, clerk of the court of do hereby certify, that the foregoing contains the original proceedings of the said court in the matter of the application of for a pension. In testimony whereof, I have hereunto set my hand and seal of office, this day of &c.

The form of the proceedings and of the certificates will be so varied as to meet the case, when the declaration is made out of court, before a judge, as heretofore provided for.

Every applicant will produce the best proof in his power. This is the original discharge or commission ; but if neither of these can be obtained, the party will so state under oath, and will then procure, if possible, the testimony of at least one credible witness, stating, in detail, his personal knowledge of the services of the applicant, and such circumstances connected therewith as may have a tendency to throw light upon the transaction.

If such surviving witness cannot be found, the applicant will so state in his declaration, and he will also, whether he produce such evidence or not, proceed to relate all the material facts which can be useful in the investigation of his claim, and in the comparison of his narrative with the events of the period of his alleged service, as they are known at the Department. A very full account of the services of each person will be indispensable to a favorable action upon his

case. The facts stated will afford one of the principal means of corroborating the declaration of the applicant, if true, or of detecting the imposition, if one be attempted; and unless, therefore, these are amply and clearly set forth, no favorable decision can be expected. All applicants will appear before some court of record in the county in which they reside, and there subscribe and be sworn to one of the declarations above provided, according to the nature of his case.

The court will propound the following interrogatories to all applicants for a pension, on account of service in the Militia, State Troops, or Volunteers:

1. Where and in what year were you born?

2. Have you any record of your age; and, if so, where is it?

3. Where were you living when called into service; where have you lived since the Revolutionary War; and where do you now live?

4. How were you called into service; were you drafted, did you volunteer, or were you a substitute; and if a substitute, for whom?

5. State the names of some of the Regular Officers who were with the troops where you served; such continental and militia regiments as you can recollect, and the general circumstances of your service?

<p>6. $\left\{ \begin{array}{l} \text{To a Soldier.} \\ \text{To an Officer.} \end{array} \right.$</p>	<p>$\left\{ \begin{array}{l} \text{Did you ever receive a discharge from} \\ \text{the service; and if so, by whom was it given,} \\ \text{and what has become of it?} \\ \text{Did you ever receive a commission, and} \\ \text{if so, by whom was it signed, and what has} \\ \text{become of it?} \end{array} \right.$</p>
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7. State the names of persons to whom you are known in your present neighborhood, and who can testify as to your character for veracity, and their belief of your services as a soldier of the Revolution.

The court will see that the answers to these questions are embodied in the declaration, and they are requested to annex their opinions of the truth of the statement of the applicant.

The applicant will further produce in court, if the same can be done, in the opinion of the court, without too much expense and inconvenience to him, two respectable persons—one of whom should be the nearest clergyman, if one lives in the immediate vicinity of such applicant—who can testify, from their acquaintance with him, that they believe he is of the age he represents, and that he is reputed and believed in the neighborhood to have been a revolutionary soldier, and that they concur in that opinion. If one of these persons is a clergyman, the court will so certify; and they will also certify to the character and standing of other persons giving such certificates.

The traditionary evidence of service is deemed very important, in the absence of any direct proof, except the declaration of the party; and the courts are requested to be very particular in the inquiry whether the belief is general, and whether any doubts have ever existed upon the subject. To require from the applicants positive proof of service from a contemporary survivor, would, after the lapse of so many years, be to deprive many of them of the benefit of the law; and, as no presumption is raised against the militia by the

existence of rolls in the department, there is no good reason why this requisition should be extended to them. On the other hand, to receive the declaration of the parties, as a sufficient ground for placing them upon the Pension Roll, without corroborating circumstances, would be to open the Treasury to great frauds. A just medium seems to present the best rule for carrying into effect the objects of Congress.

If the two persons, whose certificates are required, cannot be produced in court, without too much inconvenience and expense to the applicant, then the statement of the facts and opinions above mentioned will be made, under oath before some judge or justice of the peace, and the certificate of the court to the situation and credibility of the persons making the statement will be given.

Applicants unable to appear in court, by reason of bodily infirmity, may make the declaration before required, and submit to the examination, before a judge or justice of a court of record of the proper county, and the judge or justice will execute the duties which the court is herein requested to perform, and will also certify that the applicant cannot, from bodily infirmity, attend the court.

Whenever any official act is required to be done by a judge or justice of a court of record, or by a justice of the peace, the certificate of the Secretary of State or Territory, or of the proper clerk of the court or county, under his seal of office, will be annexed, stating that such person is a judge or justice of a court of record, or a justice of the peace, and that the signature annexed is his genuine signature.

3. Persons serving in the Marine forces.

4. Indian Spies.

Each of these two latter classes of cases will produce proof, as nearly as may be, conformably to the preceding regulations, and authenticated in a similar manner, with such variations as the different nature of the service may require.

No payments can be made on account of the services of any person who may have died before the taking effect of the act of June 7, 1832; and in case of death subsequent thereto, and before the declaration herein required is made, the parties interested will transmit such evidence as they can procure, taken and authenticated before a court of record, showing the services of the deceased, the period of his death, the opinion of the neighborhood respecting such services, the title of the claimant, and the opinion of the court upon the whole matter.

The declarant must appear in open court, unless prevented from doing so by reason of bodily infirmity; in which case the declarant will follow the rule laid down for his guidance.

The declarant must take his declaration in the county where he resides. If he should fail to do so, he must assign a sufficient reason for not conforming to the rule.

The age of the claimant must invariably be mentioned.

The declarant must mention the period or periods of the war when he served.

Every continental officer or soldier must give the name of the Colonel under whom he served ; otherwise a satisfactory examination of the claim cannot be had. Every claimant must state, with precision, the length of his service, and the different grades in which he served, in language so definite as to enable the Department to determine to what amount of pension he is entitled. In a case where the applicant cannot, by reason of the loss of memory, state precisely how long he served, he should amend his declaration by making an affidavit in the following words : —

“ Personally appeared before me, the undersigned, a justice of the peace, &c., A. B., who, being duly sworn, deposeth and saith that, by reason of old age, and the consequent loss of memory, he cannot swear positively as to the precise length of his service, but according to the best of his recollection, he served not less than the period mentioned below, and in the following grades : For years months, and days, I served as a For months and days, served as a ; and for such service I claim a pension.”

It is important, in all cases, to determine with precision the period for which each applicant served, and the particular rank he held, as the law directs the pension to be paid according to the grade of the pensioner, and the length of his service. The use of the phrase *about three or four months*, is too indefinite, and all such qualifying expressions are objectionable. Some persons who apply for pensions merely state that they served two years in the militia, &c., without specifying the tours, the names of the officers, and other particulars respecting their service. This form of a declaration is highly objectionable. It must, in every case, be clearly shown under what officers the applicant served ; the duration of each term of engagement ; the particular place or places where the service was performed ; that the applicant served with an embodied corps called into service by competent authority ; that he was either in the field or in the garrison ; and for the time during which the service was performed, he was not employed in any civil pursuit.

The law makes the relinquishment of all other pensions, except invalid, indispensable.

The opinion of the court is always required.

The clerk must give his certificate in every case.

The clerk must affix his seal, and if it has no device or inscription by which it can be distinguished from any other seal, or if he has no public seal of office, the certificate of a member of Congress, proving the official character and signature of the certifying officer, should accompany the papers.

Mode of authenticating papers.

In every instance where the certificate of the certifying officer who authenticates the papers is not written on the same sheet of paper which contains the affidavit or other papers authenticated, the certificate must be attached thereto by a piece of tape or narrow ribbon, the ends of which must pass under the seal of office of the certifying officer, so as to prevent any paper from being improperly attached to the certificate.

Proof of service.

In a case where the rolls of the service claimed are in existence, and the name of the applicant is not found on the records of the Department, he must prove his service by two credible witnesses, who are required to set forth in their affidavits the time of the claimant's entering the service, and the time and manner of his leaving the same, as well as the regiment, company, and line to which he belonged. The magistrates who may administer the oaths must certify to the credibility of the witnesses, and the official character and signature of the magistrate must be certified by the proper officer, under his seal of office.

If the party who performed the service be dead, his widow, if he left one, is entitled to the arrears. Her declaration varies from that of the soldier only in describing herself as "the widow of A. B., who entered the service of the United States under the following named officers, &c." As the date of the marriage is not the gist of her claim in such cases, this fact may be proved by common reputation.

If there be no widow, the children become entitled. In this case the declaration may be made by all the children jointly, or by one for the benefit of himself and the others, or by an administrator. The exact day of the death of the ancestor on whose account the claim is made must be proved by the oaths of two witnesses, whose affidavits shall be set forth at length, and whose credibility shall be certified to. In the same manner must be proved the names of all the children of the deceased who are living at the time of the application. It is preferred at the Pension Office that the application should be made by an administrator, whose appointment as such must be duly certified, together with a copy of his official bond, the penalty of which must be large enough to cover the amount of the pension to be granted.

FOR REVOLUTIONARY WIDOWS.

GENERAL PRINCIPLES RELATING TO PENSIONS OF REVOLUTIONARY WIDOWS.

No. 1.

Evidence of husband's service.

An act making appropriations for revolutionary and other pensions of the United States, &c.

SEC. 2. *And be it further enacted*, That no widow entitled to a pension under existing laws, and claiming a pension, whose husband

was drawing a pension at the time of his decease, shall be required, in any such case, to furnish any further evidence that said husband was entitled to a pension; nor shall any evidence, in any case, be required to entitle the widow to a pension, when the evidence is in the archives of the government, other than such proof as would be sufficient to establish the marriage between the applicant and the deceased pensioner in civil personal actions in a court of justice: *Provided*, That, upon a revision of the testimony in the case of the deceased husband, the commissioner be satisfied that the pension was properly granted. [Approved, May 7, 1846.]

This section was manifestly intended to facilitate the application of widows for pensions, founded on their marital relation to deceased pensioners. To establish, on her part, such a claim, the applicant must prove: first, that her husband was entitled to a pension; and, second, that she is his widow, within the terms of the laws granting widows pensions. The section under consideration operates on the proof to be required in both points.

1. The widow of a husband who was drawing a pension at the time of his decease is not to be required to furnish any further evidence that her said husband was entitled to such pension. This is the enactment in the body of the section, and prescribes the general rule. The proviso applies exclusively to this member of the section, and restrains its operation. It provides "that, upon a revision of the testimony in the case of the deceased husband, the Commissioner shall be satisfied that the pension was properly granted." Without this proviso, the enjoyment of a pension by the husband at the time of his death would have been conclusive on that point in the widow's case. The proviso makes it but presumptive evidence, liable to be rebutted; but it is sufficient evidence to establish the fact, unless it is rebutted by the Commissioner of Pensions, on grounds which ought to be stated for explanation by the applicant: the *onus* is on the agents of the government to bring a case within the proviso. And to the same effect is the provision of this section: "Nor shall any evidence be required to entitle the widow to a pension, when the evidence is in the archives of the government, other than such proof," &c. This makes it the duty of the government officers to search the archives, and to ascertain if there be evidence in them to establish the claim of the widow.

I do not suppose that the clause can require more than an examination of the papers and records relating to the services of the deceased husband, and the evidences of his title to a pension. But the duty of making the examination, to find support for the widow's claim, shows the spirit in which the law was enacted.

2. To establish the relation of widow to the deceased, a marriage must be proved; and this section of the law prescribes the proof required to be that "which would be sufficient to establish the marriage between the applicant and the deceased in civil personal actions in a court of justice." The general rule is, "that in all civil personal actions except that for criminal conversation, general reputation

and cohabitation are sufficient evidence of marriage." (2 Starkie on Evidence, part iv, page 939, and authorities cited; and 4 Burrows, 2057; 4 Johnson's N. Y. Rep., 52-'3 — *Fenton vs. Reed.*) Under this section, therefore, to establish the relation of widow, proof of a marriage in fact cannot be required — that is, by witnesses present at the ceremony, or by official records: general reputation and cohabitation are sufficient, *prima facie*. But as this is presumptive evidence, it may be rebutted by countervailing testimony. In terms, the operation of the section does not extend beyond these two points. Where it is necessary, to establish the claim of the widow, to prove the date of the marriage, it is incumbent on her to produce satisfactory proof to the Commissioner; but the proof ought to be considered in the spirit in which this law has been passed, of liberality to the applicant. But still, the evidence must be satisfactory. And as the marriage may, by virtue of this section, be established by presumptive testimony, its date, as an incident, may be established by evidence of the same character which in civil personal actions would establish births, pedigrees, &c. [Opinion, Attorney-General, June 23, 1846.]

A joint resolution, relative to evidence in applications for pension.

Resolved, That in all cases where a pension may have been granted to any officer or soldier of the revolution in his lifetime, the evidence upon which such pension was granted shall be conclusive of the service of such officer or soldier, in the application of any widow, or woman who may have been the widow, of such officer or soldier, for a pension; and upon proof by her that she was married to any such officer or soldier prior to January 1, 1794, and that she is a widow, she shall thereupon be placed upon the pension roll at the same rate such officer or soldier received during his lifetime.

[Approved, July 1, 1848.]

No. 2.

Commencement of pension.

A woman married two revolutionary soldiers, the latter of whom drew a pension under the act of June 7, 1832; she applies under the act of July 4, 1836, on account of the services of her first husband; her pension shall commence from March 4, 1831, not being affected by the fact that her second husband, for whose services she claims nothing, drew a pension during a portion of the time covered by hers.

[Secretary of War, July 24, 1834.]

No. 3.

Actual service required.

The law requires actual service on the part of the husband, for the widow to found her claim to a pension upon, and consequently she can claim nothing for the time he was a supernumerary.

[Secretary of the Interior, April 19, 1851.]

A prisoner on parole is not in service in such a manner as to authorize the allowance of a pension to his widow.

[Secretary of the Interior, case of Rebecca White.]

No. 4.

Pension claim a vested right.

A certificate of pension issued in the name of a widow after her death; she left no child, nor was any legitimate child of her husband in existence; the pension ordered to be paid to her administrator.

[Secretary of War, case of Ann Smith, N. Y.]

Although this decision is retained, and similar ones will be subsequently given, it must be remembered that the present rule confines the distribution of arrears to children, holding that the claim lapses to the government when there are none living.

No. 5.

Effect of a divorce.

A woman on her own application was divorced from her husband, who subsequently became a pensioner; on his death, she applies as his widow, on the ground that the divorce was technically illegal; *held*, that, even if it were competent for the Pension Office to look into such cases in order to ascertain the legality of the divorce, the widow could not avail herself of the irregularities of her own application.

[Secretary of the Interior, case of Rachael Murry.]

No. 1:

ACT OF JULY 4, 1836.

An act granting half pay to widows or orphans, where their husbands or fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes.

SEC. 3. *And be it further enacted*, That if any person who served in the war of the revolution, in the manner specified in the act passed the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died, leaving a widow whose marriage took place before the expiration of the last period of his service, such widow shall be entitled to receive, during the time she may remain unmarried, the annuity or pension which might have been allowed to her husband, by virtue of the act aforesaid, if living at the time it was passed.

SEC. 4. *And be it further enacted*, That any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any money or half pay granted by this act, shall be utterly void and of no effect; each person acting for and in behalf of any one entitled to money under this act, shall take and subscribe an oath, to be ad-

ministered by the proper accounting officers and retained by him and put on file, before a warrant shall be delivered to him, that he has no interest in said money by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person whatever.

SEC. 5. *And be it further enacted*, That the Secretary of War shall adopt such forms of evidence, in applications under this act, as the President of the United States shall prescribe.

[Approved, July 4, 1836.]

If the widow of a revolutionary soldier had married after his death, this destroyed the condition of widowhood to him, and she could not claim under this, though she were a widow at its passage, until the following act:

An act explanatory of the act entitled "An act granting half pay to widows and orphans, where their husbands and fathers have died of wounds received in the military service of the United States, and for other purposes."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the benefits of the third section of the act entitled "An act granting half pay to widows and orphans, where their husbands and fathers have died of wounds received in the military service of the United States, and for other purposes," approved the fourth day of July, eighteen hundred and thirty-six, shall not be withheld from any widow in consequence of her having married after the decease of the husband for whose services she may claim to be allowed a pension or annuity under said act: *Provided*, That she was a widow at the time it was passed.

[Approved, March 3, 1837.]

If the officer or soldier were living at the date of the passage of this act, his widow cannot claim its benefits.

[Opinion, Attorney-General, April 13, 1837.]

A resolution for the benefit of the widows of certain revolutionary officers and soldiers.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the benefits of the third section of an act entitled "An act granting half pay to widows or orphans where their husbands and fathers have died of wounds received in the military service of the United States in certain cases, and for other purposes," approved the fourth day of July, eighteen hundred and thirty-six, shall not be withheld from any widow whose husband has died since the passage of the said act, or who shall hereafter die, if said widow shall otherwise be entitled to the same.

[Approved, July 7, 1838.]

PRINCIPLES AND DECISIONS UNDER THE ACT OF 1836.

No. 1.

One not a widow at the date of the act of June, 1832, may claim when she becomes a widow.

The third section of the act of July 4, 1836, embraces the widows of officers and soldiers who were living at the date of the passage of the act of June 7, 1832.

[Opinion of Attorney-General, April 13, 1837.]

No. 2.

Her pension claim a vested right.

“Can the children of a widow, who was living on the 4th of July last, and was entitled to the benefits of the 3d section of the act, now draw the amount due up to the day of her death, although she failed to apply?”

According to several opinions heretofore given in this office, especially in navy pension cases, the right of the widow under the act is to be regarded as a vested interest accruing on the passage of the law, and not defeated by the omission to apply for it; and it goes, as such, on her death, to her personal representative: there being no special provision in the law giving it a different direction.

I am of opinion that, in all cases where the husband was in the receipt of a pension under any of the revolutionary pension acts, until the time of his death, the pension of the widow, under the act of July 4, 1836, can only commence from the date of her husband's death. This is evidently the general principle of the law; and by this construction there will be no occasion to make deductions.

[Opinion of Attorney-General, April 13, 1837.]

The amount granted by this act vests in the widow; otherwise, where the money is undrawn, and the certificate even not issued at her death, the pension would lapse into the Treasury. There being no provision made by law for the disposition of arrears of pension, the only authority for paying them over at all, even to children, arises from the fact that the claim is a vested right. But the ordinary line of distribution of a decedent's personal estate is broken, and such direction given to the avails as would be most likely to benefit those who were dependent on the pensioner, or of his blood. Hence, where a widow has two sets of children, the arrears are to be equally divided among them all. [Secretary of War, case of — Knowlton.]

FORM OF DECLARATION AND REGULATIONS.

In order to carry into effect the act of Congress of July 4, 1836, entitled “An act granting half pay to the widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes,” the following rules have been prescribed by the President of the United States, and adopted by the Secretary of War; and they are now published for the information of applicants under that law.

1. Applicants must produce the best proof the nature of the case will allow, as to the service of the deceased officer or soldier, and the time when he died. It must be clearly shown in what troop or company, and regiment or corps, he served, and the grade he held. Proof as to service must be had, either from the records of the War Department, the muster rolls, the testimony of commissioned officers, or the affidavits of persons of known respectability. Every applicant will make a declaration according to the subjoined form before a

court of record, setting forth, according to the best of her knowledge or belief, the name and rank of the person on account of whose service the claim is presented; the day, month, and year, (if possible) when he entered the service, and the time when he left the same; and, if under more than one engagement, the claimant must specify the particular periods, and the rank and name of the officers under whom the service was performed; the town or county, and State, in which he resided when he entered the service; whether he was drafted, was a volunteer, or a substitute; the battles, if any, in which he was engaged; the country through which he marched, with such further particulars as may be useful in the investigation of the claim; and, also, if the fact be so, that the claimant has no documentary evidence in support of the claim. From the best sources of information evidence must be derived as to the period of the death of the officer or soldier.

2. The legality of the marriage, and the time when it took place, must be clearly established. Record proof, as to the marriage, is always required whenever it can be obtained. In a case where the town, county, parish, or family records afford no proof as to the period when the marriage took place, the fact must be established by the testimony of one or more respectable persons, whose credibility must be certified by the officer who may administer the oath. And, in order to prevent any mistake or improper use that may be made of the affidavit of an officer who may have the custody of records, from which he may make transcripts of the record in relation to a marriage, the officer who may give his affidavit will, instead of copying the figures contained in the record, certify "that it is a true copy of the record, with the exception of the date, which is expressed on the record in fair legible figures, as follows:" [Here copy the day, month, and year, in letters and figures, in exact conformity with the original.] Then let him add the following words:

"I, A. B., above named, depose and say, that I hold the office of, in the county, town, and State aforesaid, and that the above is a true extract from the records of said, with the exception above named, as certified by me.

"A. B., *Clerk of the*,
(*or rector, or pastor, as the case may be.*)

"Sworn before me, C. D., *Justice of the Peace.*"

And then will follow the certificate of the proper officer, under his seal of office, as to the official character and signature of the magistrate who may administer the oath. Where no record proof exists, other than the family record, the original record must be produced and sworn to by the person in whose possession it has been kept.

3. In a case where the service of the deceased officer or soldier is clearly proved by record, or documentary evidence, or the affidavit of a commissioned officer, showing the grade and length of service of the deceased, the particulars in relation to the service are not required to be set forth in the claimant's declaration; but she must

swear, in positive terms, that she is the widow of the person whose service is thus proved. And no claim whatever can be sustained without positive proof of service.

4. In every case in which the deceased officer or soldier was a pensioner, the fact should be so stated, and the deceased pensioner so described, as to enable the Department to refer immediately to the evidence upon which he was pensioned, and thus facilitate the investigation of the claim of the widow.

5. Applicants unable to appear in court by reason of bodily infirmity, may make the declaration before a judge or justice of a court of record of the county in which the applicant resides, and the judge or justice will certify that the applicant cannot from bodily infirmity attend the court.

6. Whenever any official act is required to be done by a judge or justice of a court of record, or by a justice of the peace, the certificate of the Secretary of State or of the Territory, or of the proper officer or clerk of the court or county, under his seal of office, will be annexed, stating that such a person is a judge or a justice of a court of record, or a justice of the peace, and that the signature annexed is his genuine signature.

7. The widows of those who served in the Navy, or as Indian spies, will produce proof as nearly as may be, conformably to the preceding regulations, and authenticated in a similar manner, with such variations as the different nature of the service may require.

DECLARATION

In order to obtain the benefit of the third section of the act of Congress of the 4th July, 1836.

STATE, TERRITORY, OR DISTRICT
of } ss.

On this day of , personally appeared before the of the , A. B., a resident of , in the county of , and State, Territory, or District of , aged years, who being first duly sworn according to law, doth, on her oath, make the following declaration, in order to obtain the benefit of the provision made by the act of Congress, passed July 4, 1836: That she is the widow of , who was a [here insert the rank the husband held in the army, navy, or militia, as the case may be, and specify the service performed, as directed in rule number four of these regulations.]

She further declares that she was married to the said on the day of , in the year seventeen hundred and ; that her husband, the aforesaid , died on the day of ; and that she has remained a widow ever since that period,—as will more fully appear by reference to the proof hereto annexed.

Sworn to, and subscribed, on the day and year above written, before

If the widow had married a second time, in place of the last paragraph, of the preceding declaration, the following should be inserted:

She further declares that she was married to the said on the day of , 17... ; that her husband, the said , died on the day of ; that she was afterward married to , who died on the day of ; and that she still remains a widow, as will more fully appear by reference to the proof hereto annexed.

If the widow be dead, her children are entitled; and with regard to the manner of their application, the remarks following the form of declaration and regulations under the act of June 7, 1832, may be consulted.

No. 2.

ACT OF JULY 7, 1838.

An act granting half pay and pensions to certain widows.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any person who served in the war of the revolution in the manner specified in the act passed the seventh of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died, leaving a widow, whose marriage took place after the expiration of the last period of his service, and before the first day of January, seventeen hundred and ninety-four, such widow shall be entitled to receive, for and during the term of five years from the fourth day of March, eighteen hundred and thirty-six, the annuity or pension which might have been allowed to her husband, in virtue of the said act, if living at the time it was passed: *Provided,* That in the event of the marriage of such widow, said annuity or pension shall be discontinued.

SEC. 2. *And be it further enacted,* That no pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest, in any annuity, half pay, or pension, granted by this act, shall be valid, nor shall the half pay, annuity, or pension, granted by this act, or any former act of Congress, be liable to attachment, levy, or seizure, by any process, in law or equity, but shall enure wholly to the personal benefit of the pensioner or annuitant entitled to the same; and that before a warrant shall be delivered to any person acting for or in behalf of any one entitled to money under this act, such person shall take and subscribe an oath or affirmation, to be administered by the proper accounting officer, and put on file, that he has no interest in said money, by any pledge, mortgage, transfer, agreement, understanding, or arrangement, and that he does not know or believe that the same has been so disposed of to any other person.

SEC. 3. *And be it further enacted,* That the Secretary of War shall adopt such regulations and forms of evidence, in relation to applications and payments under this act, as the President of the United States may prescribe.

[Approved, July 7, 1838.]

A woman cannot claim under this act if the husband for whose services she claims was living on the 7th day of June, 1832.

[Opinion of Attorney-General, May 31, 1842.]

To repeal this disability the following act was passed:—

A resolution declarative of the pension act of July 7, eighteen hundred and thirty-eight.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the benefits of the act, entitled "An act granting half pay and pensions to certain widows," approved the seventh day of July, eighteen hundred and thirty-eight, shall not be withheld from any widow whose husband died after the passage of the act of the seventh of June, eighteen hundred and thirty-two, and before the act of the seventh of July, eighteen hundred and thirty-eight, if otherwise entitled to the same.

[Approved, August 16, 1842.]

The marriage of the widow after the death of the husband for whose services she claims, precludes her from the benefits of this act. The act provides that if any person have died, leaving a widow. Now, the second marriage destroys the relation of widowhood which she had sustained to her first husband; and when it is dissolved by the death of the second husband, she is the widow of the latter, not of the former.

[Opinion of Attorney-General, September 18, 1838.]

Congress, in the following act, obviates this objection :

An act to amend the acts of July, eighteen hundred and thirty-six and eighteen hundred and thirty-eight, allowing pensions to certain widows.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the marriage of the widow, after the death of her husband, for whose services she claims a pension under the act of the seventh of July, eighteen hundred and thirty-eight, shall be no bar to the claim of such widow to the benefit of that act, she being a widow at the time she makes application for a pension.*

[Approved, August 23, 1842.]

Since the passage of the resolution of August 16, 1842, the pension of a widow under the act of July 7, 1838, commences from March 4, 1836, although her husband may have drawn a pension during a portion of the same time.

[Opinion, Attorney-General, September 2, 1842.]

This inconvenience was remedied by —

An act making appropriations for the payment of revolutionary and other pensioners of the United States, for the fiscal year ending 30th June, 1845.

Provided, That no pension shall hereafter be granted to a widow for the same time that her husband had received one.

[Approved, April 30, 1844.]

And this, again, was amended by the following joint resolution :—

A resolution explanatory of "An act making appropriations for the payment of revolutionary and other pensions of the United States for the fiscal year ending the thirtieth of June, one thousand eight hundred and forty-five."

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled an "An act making appropriations for the payment of revolutionary and other pensions of the United States for the fiscal year ending on the

thirtieth of June, one thousand eight hundred and forty-five," shall not be so construed as in any way to affect the claims of those widows whose application for a pension, or an arrear of pension, at the passage of this resolution, shall have been made and filed in the Pension Office, awaiting the decision of the Commissioner of Pensions thereon.

[Approved, January 23, 1845.]

Widow had been married before 1794; her husband died in 1839; she died in 1845. She was not entitled under the act of July 7, 1838. The language of that act is, "if any person *have died*, leaving a widow," &c.; thus providing only for those who were widows at the date of its passage.

The act of June 19, 1840,* does not bear upon the case. It simply provides for the payment of arrearages of pension money which shall have accrued at the death of a pensioner on a pension already granted.

The act of August 23, 1842, merely secures the pension to a widow who has married since the death of the husband for whose service she claims, if she be *a* widow when she applies, though not *his* widow.

The joint resolution of July 1, 1848, was obviously intended, not to declare the law, nor to grant a new class of pensions, but to establish a rule of evidence to be applied to pre-existing rights. It is not, either in form or effect, declaratory. Its general language may lead us to the supposition that the Legislature had an opinion as to the then existing law which was clearly erroneous. But this opinion, well enough implied from the language of the resolution, does not affect the previously existing law, nor make that to be law which was not law. Its incidental effect may possibly be, to create, by implication, a new class of pensioners, never intended by Congress; but if it do, it must take its effect from its passage, and not prior thereto; and if any new rights are acquired under it, (which I am not prepared to admit,) they vested in the beneficiaries on the day of its passage, and not before. If it extend the benefit of the pension laws to a new class of pensioners, it is to the living, not the dead. The widow, having no rights in her lifetime, can transmit none to her descendants.

[Secretary of the Interior, case of Sarah White.]

This interpretation was corrected by the following —

Joint resolution explaining the acts of 7th July, 1838, 3d March, 1843, and 17th June, 1844.

Resolved, &c., That the benefits of the act of 7th July, 1838, granting pensions for five years, of the act of 3d March, 1843, granting pensions for one year, and of the act of 17th June, 1844, enlarging the act of 3d March, 1843, for the term of four years, to certain widows, shall not be withheld from any widow whose husband died since the passage of either of said acts, if said widow shall

* This act is given under the head of General Principles relating to Revolutionary Claims.

be otherwise entitled to the same: *Provided*, That no pension shall be granted to a widow for the same time her husband received one.
[Approved, March 3, 1851.]

An act granting a pension to certain revolutionary soldiers.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the widow of any person who served in the war of the revolution in the manner set forth in the act approved the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," and whose widow, in virtue of an act approved the seventh day of July, eighteen hundred and thirty-eight, entitled "An act granting half pay and pensions to certain widows," and an act approved the twenty-third day of August, eighteen hundred and forty-two, amendatory thereof, and a resolution approved the sixteenth day of August, eighteen hundred and forty-two, entitled "A resolution declarative of the pension act of July seventh, eighteen hundred and thirty-eight," received, or is entitled to, an annuity or pension for the term of five years from the fourth of March, eighteen hundred and thirty-six, shall be entitled to receive the same annuity or pension which she received, or is entitled to receive, under said acts or said resolution, or either of them, for and during the future term of one year from the fourth day of March, eighteen hundred and forty-three, or during such portion of said term as said widow shall survive, subject in all respects, however, to the rules, limitations, and conditions, in and by said acts and resolutions made and provided.
[Approved, March 3, 1843.]

An act to continue the pension of certain widows.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the act granting pensions to the widows of certain revolutionary soldiers, approved the third day of March, one thousand eight hundred and forty-three, be, and the same is, hereby revived and extended from and during the term of four years from and after the fourth day of March, one thousand eight hundred and forty-four, to have the same effect as if said act had been a grant of pensions for five years instead of one year from and after the fourth day of March, one thousand eight hundred and forty-three.

SEC. 2. *And be it further enacted*, That such widows as have been or shall be admitted by special acts of Congress to the benefit of the pension act approved the seventh day of July, one thousand eight hundred and thirty-eight, or to the benefit of the act hereby revived and extended, shall be entitled, and shall be admitted, to the benefit of this act; subject, however, to the rules, limitations, and conditions in and by said acts prescribed.

[Approved, June 17, 1844.]

PRINCIPLES AND DECISIONS UNDER THE ACT OF JULY 7, 1838, &c.

No. 1.

Widows pensioned under the act of July 4, 1836, excluded from this.

Widows pensioned under the act of July 4, 1836, are not within the equity of this act, and cannot claim its benefits.

[Opinion, Attorney-General, August 24, 1838.]

No. 2.

Second marriage.

If the claimant had married a second husband, who was living July 7, 1838, and he subsequently dies, she may, since the passage of the act of August 23, 1842, claim under this act for the services of her first husband.

[Secretary of War, November 17, 1842.]

It will be perceived that under the act of July 7, 1838, the widow was entitled to nothing if she had married after the death of the husband for whose services she claims, unless she lived to August 23, 1842; nor if the husband for whose services she claims lived after June 7, 1832, unless she lived till August 16, 1842; nor if he survived the passage of the act of July 7, 1838, unless she lived till March 3, 1851.

After the passage of the act of August 16, 1842, she was entitled to a pension, commencing March 4, 1836, although her husband might himself have drawn a pension after that date, until the passage of the act of April 30, 1844; and, by the act of January 23, 1845, even then, if her claim had been filed before said April 30. But under the resolution of March 3, 1851, she cannot receive a pension for any portion of the time her husband — that is, the husband for whose service she claims — drew one, no matter when her claim was filed.

This recapitulation has been deemed necessary to explain the effect of the many mutations this law has undergone.

The acts of 1843 and 1844 are simply continuations of that of 1838, granting no original pension whatever. No one is, consequently, entitled under them or either of them who cannot claim under the last-mentioned law.

FORM OF DECLARATION AND REGULATIONS.

The regulations given under the act of July 4, 1836, are equally applicable to this; and the form of the declaration is the same, changing, of course, the title of the act, the benefit of which is claimed, from "July 4, 1836," to "July 7, 1838," and averring that the marriage occurred, not before the last period of the service of the husband, but before January 1, 1794.

No. 3.

ACT OF FEBRUARY 2, 1848.

An act making further provisions for surviving widows of the soldiers of the revolution.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any person who served in the war of the revolution in the manner specified in the act passed the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died, or shall hereafter die, leaving a widow, whose marriage took place before the first day of January, one thousand seven hundred and ninety-four, such widow shall be entitled to receive, for and during her natural life, from and after the fourth day of March, eighteen hundred and forty-eight, the annuity or pension which might have been allowed to her husband, in virtue of said act, if living at the time it was passed, under the same rules, regulations, and restrictions as are prescribed in the act approved July seventh, eighteen hundred and thirty-eight, entitled "An act granting half pay and pensions to certain widows": *Provided,* That in the event of the marriage of such widow, said annuity or pension shall be discontinued.

SEC. 2. *And be it further enacted,* That such widows as have been admitted by special acts of Congress to the benefit of the pension act approved the seventh day of July, one thousand eight hundred and thirty-eight, or to the benefit of the act approved the seventeenth of June, one thousand eight hundred and forty-four, shall be entitled, and shall be admitted to the benefit of this act; subject, however, to the rules, limitations, and restrictions in and by said acts prescribed. [Approved, February 2, 1848.]

Widows whose husbands lived after June 7, 1832, are entitled under this act. [Secretary of the Interior, June 6, 1850.]

FORM OF DECLARATION AND REGULATIONS.

These may be taken from those given under the act of July 4, 1836, with such alterations of title, &c., as are obvious.

Where, however, the widow lived till July 29, 1848, the application is usually made under that act, as it is in some cases more beneficial than this.

This act is therefore more frequently used as a continuation of the acts of July 7, 1838, March 3, 1843, and June 17, 1844, than as an original one. In such cases, the widow or her representative claims the benefit of the three specified acts and of that of February 2, 1848.

No. 4.

JOINT RESOLUTION OF JULY 1, 1848.

A joint resolution in relation to evidence in applications for pensions.

Resolved, &c., That in all cases where a pension may have been granted to any officer or soldier of the revolution, in his lifetime, the evidence upon which such pension was granted shall be conclusive of the service of such officer or soldier, in the application of any widow, or woman who may have been the widow, of such officer or soldier, for a pension; and upon proof by her that she was married to such officer or soldier prior to January the first, 1794, and that she is a widow, she shall thereupon be placed upon the Pension Roll, at the same rate that such officer or soldier received during his lifetime.

[Approved, July 1, 1848.]

PRINCIPLES UNDER THE RESOLUTION OF JULY 1, 1848.

For some remarks on this resolution, see, *ante*, the Secretary's decision in the case of Sarah White, under the act of July 7, 1838.

This resolution has so far been construed to be an original act as to grant, from its date, the same pension to a widow which her husband enjoyed, (she being already a pensioner under some of the prior acts,) although that pension were greater than she was entitled to under the act under which she originally claimed. Thus, under the act of March 18, 1818, and May 1, 1820, the husband may have drawn \$96 per annum for a service of nine months as a private, which under the act of June 7, 1832, would only have entitled him to \$30 per annum. The widows' acts heretofore given proffer to the widow a pension equal to what the husband might have claimed under the act of 1832, and consequently, for the same term on the part of her husband, she, under the act of July 7, 1838, would only be allowed the said sum of \$30. But if her husband at his death was drawing the \$96, then she will be entitled to \$30 a year up to July 1, 1848, and from that date during her life to \$96.

No declaration is necessary in applying for this increase, a simple suggestion of the facts, with evidence of the identity of the party applying for it, sufficing.

No 5.

ACT OF JULY 29, 1848.

An act for the relief of certain surviving widows of officers and soldiers of the revolutionary war.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the widows of all officers, non-commissioned officers, musicians, soldiers, mariners, or marines, and Indian spies, who shall have served in the

continental line, State troops, volunteers, militia, or in the naval service, in the revolutionary war with Great Britain, shall be entitled to a pension during such widowhood, of equal amount per annum that their husbands would have been entitled to, if living, under existing pension laws; to commence on the fourth day of March, eighteen hundred and forty-eight, and to be paid in the same manner that other pensions are paid to widows; but no widow now receiving a pension shall be entitled to receive a further pension under the provisions of this act; and no widow married after the first day of January, one thousand eight hundred, shall be entitled to receive a pension under this act.

SEC. 2. *And be it further enacted*, That any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest, in any way granted by this act, shall be utterly void and of no effect, nor shall the annuities or pension granted by this act be liable to attachment, levy, or seizure by any process of law or equity, but shall enure wholly to the personal benefits of the pensioner or annuitant entitled to the same. The same rules of evidence, regulations, and prescriptions shall apply and govern the Commissioner of Pensions and pension agents under this act as now prevail under existing pension laws which relate to widows of revolutionary officers and soldiers.

SEC. 3. *And be it further enacted*, That this act shall take effect immediately. [Approved, July 29, 1848.]

This act differs from the preceding ones, which give to the widow the same benefits only that the husband, if living, could have claimed under the act of June 7, 1832 (with the exception made by the resolution of July 1, 1848), while this confers upon her all the rights he could have had under any existing pension laws.

The regulations and form prescribed under the act of July 4, 1836, may be used under this, *mutatis mutandis*.

No. 6.

ACT OF FEBRUARY 3, 1853.

An act to continue half pay to certain widows and orphans.

SEC. 2. *And be it further enacted*, That the widows of all officers, non-commissioned officers, musicians, and privates, of the revolutionary army, who were married subsequent to January, Anno Domini 1800, shall be entitled to a pension in the same manner as those who were married before that date. [Approved, February 3, 1853.]

DECISION UNDER THE ACT OF 1853.

Pensions under this act commence from the date of its passage.

[Secretary of the Interior, case of Mary Steele.]

FORM OF DECLARATION.

The regulations and form of declaration are the same with those under the act of July 4, 1836, with the obvious change of the title of the act applied for, and the date of marriage.

CONTINENTAL HALF PAY—TO OFFICERS.

Resolution—In Congress, May 15, 1778.

Resolved, unanimously, That all military officers commissioned by Congress, who now are, or hereafter may be, in the service of the United States, and shall continue therein during the war, and not hold any office of profit under these States, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they live so long, one-half of the present pay of such officer; provided, that no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than the one-half part of the pay of a colonel of such corps respectively; and provided that this resolution shall not extend to any officer in the service of the United States, unless he shall have taken an oath of allegiance to, and shall actually reside within some of the United States.

Resolution—In Congress, October 21, 1780.

Resolved, That the officers who shall continue in the service to the end of the war, shall also be entitled to half pay during life, to commence from the time of their reduction.

Resolution—In Congress, January 17, 1781.

Resolved, That all officers in the hospital department and medical staff, hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time, as supernumeraries, shall be entitled to, and receive, during life, in lieu of half pay, the following allowance, viz:—

The director of the hospital equal to the half pay of a lieutenant-colonel.

Chief physicians and surgeons of the army and hospitals, and hospital physicians and surgeons, purveyor, apothecary, and regimental surgeons, each equal to the half pay of a captain.

CONTINENTAL COMMUTATION.

For the reasons set forth in the preamble to the following act, the half pay promised by the resolution of October 21, 1780, was commuted into five years' full pay.

Resolution—In Congress, March 22, 1783.

On the report of a committee, consisting of Mr. Hamilton, Mr. Dyer, and Mr. Bedford, to whom was referred a motion of Mr. Dyer, together with the memorial of the officers of the army, and the report of the committee thereon, Congress came to the following resolutions:

1. Whereas, the officers of the several lines under the immediate command of his excellency, General Washington, did, by their late memorial, transmitted by their committee, represent to Congress that the half pay granted by sundry resolutions, was regarded in an unfavorable light by the citizens of some of these States, who would prefer a compensation for a limited term of years, or by a sum in

gross, to an establishment for life; and did, on that account, solicit a commutation of their half pay for an equivalent in one of the two modes above mentioned, in order to remove all subject of dissatisfaction from the minds of their fellow-citizens; and whereas Congress are desirous as well of gratifying the reasonable expectations of the officers of the army, as removing all objections which may exist, in any part of the United States, to the principle of the half pay establishment, for which the faith of the United States hath been pledged; persuaded that those objections can only arise from the nature of the compensation, not from any indisposition to compensate those whose services, sacrifices and sufferings have so just a title to the approbation and rewards of their country.

2. *Therefore, resolved*, That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money, or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half pay promised for life by the resolution of the 21st day of October, 1780; the said securities to be such as shall be given to other creditors of the United States: provided, it be at the option of the lines of the respective States, and not of officers, individually, in those lines, to accept or refuse the same; and provided, also, that their election shall be signified to Congress through the commander-in-chief, from the lines under his immediate command, within two months, and through the commanding officer of the southern army, from those under his command, within six months, from the date of this resolution:

3. The same commutation shall extend to the corps not belonging to the lines of particular States, and who are entitled to half pay for life, as aforesaid; the acceptance or refusal to be determined by corps, and to be signified in the same manner, and within the same time, as above mentioned:

4. That all officers belonging to the hospital department, who are entitled to half pay by the resolution of the 17th day of January, 1781, may, collectively, agree to accept or refuse the aforesaid commutation, signifying the same through the commander-in-chief, within six months from this time: that such officers as have retired at different periods, entitled to half pay for life, may, collectively, in each State of which they are inhabitants, accept or refuse the same; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period: that with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may be now due to them since the time of their retiring from service, as well as of what might hereafter become due; and that so soon as their acceptance shall be signified, the superintendent of finance be, and he is hereby, directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates, bearing interest at six per cent. That all officers entitled to half pay for life, not included in the preceding resolution, may also, collectively, agree to accept or refuse the aforesaid commutation, signifying the same within six months from this time.

Resolution—In Congress, March 8, 1785.

Resolved, That the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the half pay or commutation, with those officers who retired under the resolves of the 3d and 21st October, 1780.

HALF PAY TO WIDOWS.

Resolution—In Congress, August 24, 1780.

Resolved, That the resolution of the 15th day of May, 1778, granting half pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died, or shall hereafter die, in the service; to commence from the time of such officers' death, and continue for the term of seven years; or, if there be no widow, or in case of her death or intermarriage, the said half pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any; and that it be recommended to the Legislatures of the respective States to which such officers belong, to make provision for paying the same, on account of the United States:

That the restricting clause in the resolution of May 15th, 1778, granting half pay to the officers for seven years, expressed in these words, viz: "and not hold any office of profit under these States, or any of them," be, and is hereby, repealed.

Half pay and commutation do not in strictness fall properly under the head of Pension, nor is there any law in existence providing for their payment; the only redress which one to whom they are due has, being in an application to Congress. Yet for obvious reasons it was deemed proper to include the resolutions relating to them in this Digest.

VIRGINIA HALF PAY.

An act to provide for liquidating and paying certain claims of the State of Virginia.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the proper accounting officers of the Treasury do liquidate and pay the accounts of the Commonwealth of Virginia against the United States, for payments to the officers commanding in the Virginia line in the war of the revolution, on account of the half pay for life promised the officers aforesaid by that Commonwealth, the sum of one hundred

and thirty-nine thousand five hundred and forty-three dollars and sixty-six cents.

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby, required and directed to pay to the State of Virginia the amount of the judgments which have been rendered against the said State, for and on account of the promise contained in an act passed by the General Assembly of the State of Virginia, in the month of May, Anno Domini one thousand seven hundred and seventy-nine, and in favor of the officers or representatives of officers of the regiments and corps hereinafter recited, and not exceeding in the whole the sum of two hundred and forty-one thousand three hundred and forty-five dollars, to wit:

First. To the officers, or their legal representatives, of the regiment commanded by the late Colonel George Gibson, the amount of the judgments which they have obtained, and which are now unsatisfied.

Second. To the officers, or their legal representatives, of the regiment denominated the second State regiment, commanded, at times, by Colonels Brent and Dabney, the amount of the judgments which they have obtained, and which are now unsatisfied.

Third. To the officers, or their legal representatives, of the regiments of Colonels Clark and Crockett, and Captain Rogers's troop of cavalry, who were employed in the Illinois service, the amount of the judgments which they have obtained, and which are now unsatisfied.

Fourth. To the officers, or their legal representatives, serving in the regiment of State artillery commanded by the late Colonel Marshall, and those serving in the State garrison regiment commanded by Colonel Muter, and serving in the State cavalry commanded by Major Nelson, the amount of the judgments which they have obtained, and which are now unsatisfied.

Fifth. To the officers, or their legal representatives, who served in the navy of Virginia during the late war of the revolution, the amount of the judgments which they have obtained, and which are now unsatisfied.

SEC. 3. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby directed and required, to adjust and settle those claims for half pay of the officers of the aforesaid regiments and corps, which have not been paid or prosecuted to judgments against the State of Virginia, and for which said State would be bound on the principles of the half pay cases already decided in the Supreme Court of Appeals of said State; which several sums of money herein directed to be settled or paid shall be paid out of any money in the Treasury not otherwise appropriated by law.

[Approved, July 5, 1832.]

The following are the acts of the Virginia Legislature giving the half pay which is assumed by this act:—

An act concerning officers, soldiers, sailors and marines

All general officers of the army, being citizens of this Commonwealth, and all field officers, captains, and subalterns, commanding, or who shall command in the battalions of this Commonwealth on continental establishment, or serving in the battalions raised for the immediate defence of this State, or for defence of the United States; and all chaplains, physicians, surgeons, and surgeons' mates, appointed to the said battalions, or any of them, being citizens of this Commonwealth, and not being in the service of Georgia or of any other State, provided Congress do not make some tantamount provision for them, who shall serve henceforward, or from the time of their being commissioned, until the end of the war; and all such officers who have or shall become supernumerary on the reduction of any of the said battalions, and shall again enter into the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half pay during life, to commence from the determination of their command or service.

[May Session, 1779. 10 Henning's Statutes at large, page 25.]

An act putting the eastern frontier of this Commonwealth into a posture of defence.

And whereas experience has evinced the great utility of marines, *Be it enacted*, That a body of three hundred men be recruited for that purpose, to be commanded by five captains and fifteen lieutenants, the said captains and subalterns to be appointed by the executive. *And be it further enacted*, That the said captains, together with the subalterns, and all other commissioned officers in the service of the navy, the master, surgeon, and surgeon's mate, shall be entitled to the same pay and rations, the same privileges and emoluments, and rank in the same degree with officers of the like rank belonging to regiments heretofore raised for the internal defence of this State.

[May Session, 1780. 10 Henning's Statutes at large, p. 298.]

An act to adjust and regulate the pay and accounts of the officers and soldiers of the Virginia line or continental establishment, and also of the officers, soldiers, sailors, and marines, in the service of the State, and for other purposes.

SEC. 10. And whereas, by the reduction of the battalions and corps in the State service, a considerable number of officers have become supernumerary; *Be it enacted*, That a return of all the State officers shall be made to the next Assembly, wherein the corps, the rank of each officer, the date of his commission, the number of men at first raised in each corps, number of men when reduced, and time when reduced, shall be particularly specified by the executive; and the executive are hereby empowered and required to set on foot proper enquiries to discriminate such officers as by unworthy conduct, or by any means whatever, be thought unfit to be considered as entitled to half pay.

SEC. 13. *And be it further enacted*, That the same indulgences and advantages given to the State infantry, shall be and are hereby given to the officers and soldiers of the State cavalry, and on the same terms.

SEC. 14. *And be it further enacted*, That the officers and seamen of the navy, of this State, as they stand arranged by a late regulation, shall be entitled to the same advantages as the officers belonging to this State in the land service, agreeable to their respective ranks.
November Session, 1781. 10 Henning's Statutes at large, p. 467.]

PRINCIPLES AND DECISIONS UNDER THE ACT OF JULY 5, 1832.

No. 1.

A naval officer on parole to the close of the war entitled.

An officer of the Virginia State navy during the war of the revolution, who was taken prisoner in April, 1781, and remained a prisoner of war on parole, unexchanged, till the close of the war, is entitled to half pay for life.

[Markham's Administrator *vs.* Commonwealth, 1 Leigh's Reports, p. 516.]

No. 2.

When half pay in such case commences.

The general exchange of prisoners took place in May, 1783, from which time the half pay in such case must commence. [Ib.]

No. 3.

Interest not allowed.

Officers of the State navy, entitled to half pay for life, are not to be allowed interest on it. [Ib.]

No. 4.

Limitations.

The act of limitations does not apply to claims for half pay, nor does the lapse of time (from 1783, when the claim accrued, to 1826, when it was asserted), under the circumstances of the case, afford presumption of payment, or of abandonment of the claim. [Ib.]

Claims under the act of July 5, 1832, are not affected by the fourth section of the act of March, 1845, making appropriations for the civil and diplomatic expenses of the government.

[Opinion of Attorney-General, April 22, 1845.]

No. 5.

Supernumeraries.

An officer of the State navy of Virginia, who became supernumerary before the close of the revolutionary war, and continued so to the end thereof, is entitled to half pay.

[Commonwealth *vs.* Lilly's Administrator, 1 Leigh, p. 525.]

An officer of the Virginia line, or *State* establishment, during the revolution, who became supernumerary after the passing of the act of May, 1779, but before the end of the war, and so continued till its close, is entitled to half pay for life.

[Commonwealth *vs.* Marston's Administrator, 9 Leigh, p. 36.]

Three judges against two decided that when a Virginia officer in the *Continental* establishment became supernumerary *before* May, 1779, and did not again enter the service, he was not entitled to half pay. [Tatem's Executor *vs.* Commonwealth, 9 Leigh, p. 56.]

If an officer in the State service became supernumerary before the act of May, 1779, he was not entitled to the benefit of the provisions of that act. [Marston's case, 9 Leigh, 36; and Tatem's case, same, 56.]

No. 6.

May be recovered against Virginia.

The act of July 5, 1832, authorizing the settlement of claims of officers in the State service of Virginia, for half pay, at the Treasury of the United States, is no reason for denying the settlement of such claims at the Treasury of Virginia, or for her courts refusing the adjudication of them.

[Commonwealth *vs.* Marston's Administrator, 9 Leigh, 36.]

No. 7.

Resignation must be proved.

It is shown that Marston was in service in 1782. It cannot be presumed that at that late period he resigned his commission; and if the commonwealth relied upon that point, the burden of proof would be on her. [Ib.]

No. 8.

What bars the claim.

Officers who have accepted the commutation of five years' full pay in lieu of half pay for life, are not entitled now to claim the latter under the act of July 5, 1832.

[Opinion of Attorney-General, March 21, 1833.]

The representatives of an officer who, in his lifetime, obtained judgment against Virginia for the commutation of five years' full pay, and was paid, cannot claim under this act.

[Opinion of Attorney-General, June 2, 1847.]

The benefit of the act of July 5, 1832, cannot be claimed by one who has obtained judgment against Virginia for half pay.

[Secretary of the Interior, case of Isaac Holmes.]

An officer who elected to receive commutation, cannot now apply for half pay. [Ib.]

No. 9.

Citizenship of Virginia — When required.

No general officer of the army, chaplain, physician, surgeon, or surgeon's mate, who was not a citizen of Virginia, was entitled under her half pay laws. Field officers, captains, and subalterns, who commanded in the Virginia continental or State lines, and all such officers who became supernumerary on the reduction of any of said battalions, and who, if required, again entered the service in the same, or a higher grade, and continued therein till the end of the war,

were entitled, although they might not have been citizens of that State. Nor was such citizenship necessary to entitle captains and subalterns and all the commissioned officers of the navy, or master surgeons and surgeon's mates.

[Opinion of Attorney-General, February 9, 1836.]

No. 10.

To whom arrears are to be paid.

The moneys payable under the third section of the act of July 5, 1832, like those payable under the second section of the same act, are to be paid to the legal representatives, who cannot be required to show that there is either heir or creditor in existence.

[Opinion of Attorney-General, October 24, 1836.]

The assent of the heirs is not requisite to the payment of money under this act to the legal representatives.

[Secretary of War, March 5, 1836.]

No. 11.

Decision of Virginia Court is binding.

A decision rendered by the Court of Appeals in Virginia, relating to a half pay claim, is binding on the department.

[Secretary of War, May 16, 1833.]

No. 12.

Half pay dependent on actual rank.

The cases of Peter Moore and Samuel B. Green — appeals from the decisions of Col. Edwards, Commissioner of Pensions.

The decisions of those two cases turn upon the same documents.

Both officers belonged to Col. Crockett's Virginia regiment during the war of the Revolution.

Peter Moore has been recognized as having been a *lieutenant*, but it is alleged he was a *captain*.

Samuel B. Green is acknowledged to have been an ensign, but it is concluded he was a lieutenant.

Against those claims there have been decisions made by my predecessors in office. By these decisions I am bound. I can discover no new evidence to change, in any essential way, the characters of the two cases;

I have no doubt, after an inspection of the two reports — the one by Col. Crockett, and the other by the "board of officers" — that Mr. Moore was *entitled to be promoted* to a captaincy, and Mr. Green to a lieutenantcy, but they never were promoted. The amount of "half pay" depends on the *rank* of the officer, and that rank depends on the *commission*. I confess it would be otherwise, if the very ingenious argument of the Hon. Mr. Davis should prevail—that a military commission descends upon the *next in rank*, by *operation of law*, as land descends upon the *heir on the death of the ancestor*. In this way, the officer, instead of a commission, would have to carry about him the statute law of Virginia and the rules of descent of military

commissions. The actual possession of the commission is the one essential thing; but the *mere claim* to it is a very different matter, and cannot be overlooked in the administration of our pension laws.

[Secretary of War, July 6, 1844.]

No. 13.

Pension does not bar.

The reception of a pension under the act of 1828, or that of 1832, does not preclude the party from the benefit of the act of July 5, 1832.

[Secretary of War, June 15, 1844.]

No. 14.

Line and Staff Officers united.

One who was both ensign and paymaster became supernumerary as paymaster, and continued to serve as ensign to the end of the war; he is entitled to half pay for life in both grades.

[Secretary of the Interior, May 14, 1850.]

An officer is entitled to half pay, not only for his rank in the line, but in the staff also.

[Secretary of the Interior, January 27, 1852.]

Half pay has not been allowed in Virginia for staff rank, when the officer was not in actual service in that rank at the time he became supernumerary.

[Secretary of the Interior, case of Isaac Holmes.]



VIRGINIA COMMUTATION.

Whereas, doubts have arisen whether certain officers hereinafter described have a right to the compensation of half pay; for the removal of such doubts, *Be it enacted by the General Assembly*, That the same compensation of half pay should be extended to those officers of the State line, who continued in actual service to the end of the war, as was allowed to the officers of the continental line, and also to those who become supernumerary, and being afterwards required, did again enter into actual service, and continue therein to the end of the war; any act or acts to the contrary in any wise notwithstanding.

[Henning's Statutes, December 16, 1790.]

As the officers of the continental line had a provision of five years' full pay made them in compensation for the half pay for life which had been promised them by Congress, the courts of Virginia decided that the officers of the State line might demand this commutation in their own cases under the act; and this is the basis of the Virginia commutation.

The act of July 5, 1832, assumes the payment of half pay claims, but not of commutation claims.

[Opinion of Attorney-General, April 8, 1844.]

An act to continue the Office of Commissioner of Pensions.

SEC. 4. *And be it further enacted*, That the duties heretofore required of, and performed by, the Secretary of the Treasury, under the provisions of the act approved on the 15th day of May, 1828, granting allowances to the officers and soldiers of the revolutionary army, and in relation to Virginia claims for revolutionary services and deficiency of commutation, be, and the same are hereby transferred to, and made the duties of the Secretary of War, from and after the first day of June next. [Approved, March 3, 1835.]

An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 3d day of June, 1849, and for other purposes.

A portion of the first section of this act is in the following words:—

For repayment to Virginia of money paid by that State, under judgment of her courts against her, to revolutionary officers and soldiers, and their representatives, for half pay and commutation of half pay, a sum not exceeding \$81,273.17: *Provided, however*, That the agent of said State shall first deposit authenticated copies of the acts or judgments under which the money was paid by the State of Virginia. [Approved, August 12, 1848.]

DECISIONS.

Under the Virginia act of 1790, commutation claims are provided for. And since Mr. Taney's decision, of March 31, 1833, that they were not embraced in the act of July 5, 1832, Congress has recognized them by the acts of March 3, 1835, and of August 12, 1848, and they should now be paid under the act of July 5, 1832, as interpreted by said acts. [Opinion of Attorney-General, March 27, 1849.]

Officers of the State navy are not entitled to commutation.

[Markham's Administrator *vs.* Commonwealth, 1 Leigh, p. 516.]

Officers in the State service, who continued in actual service till the end of the war, were entitled to demand commutation of five years' full pay, with interest from the end of the war, in lieu of half pay for life; but officers who became supernumerary before the end of the war, could only claim half pay for life, not the commutation.

[Commonwealth *vs.* Marston's Administrator, 9 Leigh, 56.]

In 1850, a resolution of inquiry with regard to the payment of certain commutation claims was introduced into the House of Representatives of the United States, and since this time the Department of the Interior has refused to act upon them.

FORMS.

There is no specified form of declaration under the act of July 5, 1832. That under the act of 1832 may be taken as the model for one under this, or the party may make his statement in his own language, taking care accurately to describe the character of the service, the regiment, &c.

ORGANIZATION OF THE REVOLUTIONARY
ARMY.

Congress adopted the army raised in the Northern States after the Lexington affair on the 19th of April, 1775, and elected George Washington Commander-in-Chief. (June 15, 1775.)

He is authorized to keep such a force in Massachusetts as he may deem necessary, not to exceed 22,000 men. (July 21, 1775.)

Ten companies of riflemen to be raised for one year. (June 14, 1775.)

A body of forces, not to exceed 5000, to be kept in the New York Department. (July 25, 1775.)

New Jersey to raise two battalions for one year. (October 9, 1775.)

Pennsylvania to raise one battalion for one year. (October 12, 1775.)

A company of matrosses to be raised for defence of Hudson's river. (October 28, 1775.)

The new army before Boston to consist of 20,372 men, officers included. Officers now in service to be preferred, and the enlistment to be to December 31, 1776. South Carolina to keep up three battalions, and Georgia one, on continental pay. (November 4, 1775.)

The two battalions of North Carolina taken into continental pay for one year from this date. (November 28, 1775.)

The regiment of artillery to consist of one colonel, two lieutenant-colonels, two majors and twelve companies, with the several company officers. (December 2, 1775.)

Pennsylvania to raise four more battalions, and Delaware one. (December 9, 1775.)

Pennsylvania to raise one more. (January 3, 1776.)

A battalion of Canadians to be raised under Colonel James Livingston. (January 8, 1776.)

One thousand more Canadians to be formed into one regiment of four battalions. (January 2, 1776.)

Two battalions to be formed of the troops now in Canada; one to be raised in New Hampshire; one in Connecticut; and one in New York. (January 8, 1776.)

Another battalion to be raised in New Jersey. (January 10, 1776.)

Another in North Carolina. (January 16, 1776.)

A regiment to be raised by Massachusetts; one by New Hampshire, and one by Connecticut; and a regiment of artillery by Massachusetts, for Canada. These exclusive of the thirteen battalions for the army at Boston. (January 29, 1776.)

Captain Nelson's independent company of riflemen received, and ordered to Canada. (January 30, 1776.)

Another regiment had been raised by General Arnold in Canada. (February 17, 1776.)

New York, New Jersey, Pennsylvania, Delaware, and Maryland, put into one military department; Virginia, North Carolina, South Carolina, and Georgia, into another. (February 26, 1776.)

A company of artillery to be raised under Captain Arundel. Captain Woolverton's taken into continental pay. (March 19, 1776.)

St. Aulaire to raise an independant company of rangers in Canada. (March 21, 1776.)

North Carolina may raise one or two more battalions at continental expense. (March 26, 1776.)

Lieutenant-Colonel Dugan to raise three hundred rangers. (March 28, 1776.)

The riflemen to be re-enlisted for two years. (April 15, 1776.)

The two Rhode Island battalions taken into continental pay. (May 11, 1776.)

Five battalions now in Massachusetts, and three additional battalions, taken into continental pay, (the three for the Eastern Department.) One battalion more for New Hampshire. (May 14, 1776.)

Massachusetts and Connecticut to enlist their men for two years, if possible. (May 15, 1776.)

Virginia to raise a battalion of riflemen. (May 18, 1776.)

One battalion of Germans to be raised. (May 25, 1776.)

One battalion of artillery, two of foot, and two of riflemen, now in the service of South Carolina, taken into continental pay from the time they were raised. (June 18, 1776.)

New York to raise a regiment for three years or during the war. June 21, 1776.)

A regiment of riflemen under Colonel Stevenson to be raised for three years. (June 27, 1776.)

The German battalion is to serve three years. (June 27, 1776.)

Colonel Dubois to raise a regiment to serve three years, to be officered by those who have served in Canada. (June 26, 1776.)

Colonel S. Warner to raise a regiment on the same terms. (June 26, 1776.)

Georgia to raise one battalion of foot, one of rifles, and two companies of artillery. (July 5, 1776.)

Wm. Kelsay's independent (New Jersey) company taken into continental pay. (July 6, 1776.)

One battalion for defence of western frontiers to be raised in Pennsylvania. (July 15, 1776.)

John Doyle to raise a company of riflemen for three years. (July 16, 1776.)

Woelper's company to be added to the German battalion. (July 17, 1776.)

The South Carolina battalion of rangers taken into continental pay, and Georgia to raise a similar one. (July 24, 1776.)

Maryland to raise two battalions for the war. (August 17, 1776.)

Six companies to be raised in Northumberland, and two in Westmoreland, Pennsylvania, for the war. (August 23, 1776.)

Eighty-eight battalions to be raised for the war. (September 16, 1776.)

Whitecombe to raise two companies of artillery. (October 15, 1776.)

Non-commissioned officers and soldiers may enlist either for the war or for three years. (November 12, 1776.)

A regiment of artillery to be raised in Virginia. (November 26, 1776.)

Ottendorf to raise one company of hunters and two of light infantry. (December 5, 1776.)

General Washington to raise and officer sixteen battalions, (in addition to the eighty-eight battalions already ordered by Congress,) three thousand light-horse, three regiments of artillery, and a corps of engineers. (December 27, 1776.)

An independent company to be raised in Lancaster for three years or during the war. (January 18, 1777.)

One also at Kittaning. (January 22, 1776.)

Another artillery company to be raised in Georgia. (February 6, 1777.)

An independent company to be raised and stationed at Lewistown. (April 4, 1777.)

A corps of invalids to be formed. (June 20, 1777.)

Proctor's corps and Bull's State regiment transferred by Pennsylvania to the United States. (Before July 19, 1777.)

The States, except Georgia, to fill up their regiments with militia, which shall serve nine months. (February 26, 1778.)

General Washington may employ a body of Indians, not exceeding four hundred. (March 4, 1778.)

Armand's independent corps taken into continental pay. (June 25, 1778.)

The infantry for the next campaign to consist of eighty battalions. (March 9, 1779.)

The infantry for the next campaign to consist of 35,215 men. All the men whose service does not expire before the last of next September, shall be counted as part of the quotas to be furnished by their respective States. (February 9, 1780.)

Georgia to furnish one battalion of infantry and one regiment of horse. (February 11, 1780.)

Such of the sixteen additional battalions raised by General Washington — under the resolution of December 27, 1776 — as have not been annexed to the line of some particular State, and all the light corps, horse and foot, and the German battalion, to be reduced; the non-commissioned officers and privates annexed to the troops of their respective States; and such of them as do not belong to any particular State, to be annexed to such corps as the commander-in-chief shall direct. The regular army, from and after the first of January next, to consist of four regiments of cavalry or light dragoons; four of artillery; forty-nine of infantry, exclusive of Hazen's; and one of artificers. The States to select from the line of the army a proper number of officers to command their respective regiments. To fill up their regiments with war's men, if possible, but if a sufficient number cannot be obtained before the first of December next, the

deficiency to be supplied with men enlisted for one year, if not sooner relieved by war's men. (October 3, 1780.)

Instead of four regiments of cavalry, there shall be four legionary corps, each consisting of four troops of mounted and two of dismounted dragoons. There shall be two partizan corps, each consisting of three troops of mounted and three of dismounted dragoons. All to be enlisted for the war. (October 21, 1780.)

The States to supply the deficiencies of their troops, called for by the foregoing resolutions, with men enlisted for the war, or for three years, by the first of March next, calculating the deficiency upon the men whose terms expire then. (December 10, 1781.)

A corps of thirty pioneers to be raised in the South for one year. (March 26, 1782.)

The supernumerary junior lieutenants in each regiment to be reduced (under resolve of October 21, 1780,) to ten, and to retire, in the main army, by first of June next; in the southern army, by first of July, unless they accept staff appointments, when they shall receive no pay but that belonging to their rank in the line. (April 23, 1782.)

The non-commissioned officers and soldiers, including those prisoners with the enemy, belonging to the respective States, to be so arranged as to form complete regiments; the junior regiments, for this purpose, being incorporated with the senior, and the excess to be formed into complete companies. When the officers cannot agree as to who shall retire, the juniors shall do so. The retiring officers to retain their rank, and be called into service as deficiencies occur. This arrangement to take effect on the first of January next. (August 7, 1782.)

The time of the war's men does not expire till the ratification of the definitive treaty of peace; but the commander-in-chief may grant them furloughs or discharges, as he sees fit. (April 23, 1783.)

When the frontier posts shall be evacuated by the enemy, the commander-in-chief to place in them as many of the three years' men as he thinks proper. (May 12, 1783.)

Commander-in-chief to grant furloughs to the war's men and the eighteen months' men in North Carolina, who shall be discharged when the definitive treaty of peace shall be ratified. (May 26, 1783.)

All the troops in Pennsylvania and south of it, except at Fort Pitt, to be discharged. (October 29, 1783.)

Definitive treaty of peace signed at Paris, September 3, 1783.

Ratified by Congress, January 14, 1784.

The quotas furnished by the various States, and the militia ordered by Congress from them, with many particulars not thought necessary to be included in this abstract, will be found by reference to the synopsis of the military acts of the Continental Congress relating to them.

REVOLUTIONARY MILITIA.

The militia and State troops, during the Revolution, were under the orders of the several States to which they belonged, and the laws relating to them are to be found in the Acts of their respective Legislatures. Sometimes, however, Congress called upon certain States for militia, in addition to their continental contingents, and these calls will be found in the synopsis relating to them. The following are general requisitions, relating to more than one State:—

For the militia furnished in defence of Rhode Island by New Hampshire, Massachusetts, Connecticut, and Rhode Island, see J. C. (August 7, 1778.)

Volunteer light-horse, not exceeding 500, to be raised in the States from Virginia to Georgia, inclusive, to serve during the present campaign. (August 7, 1780.)

The Maryland militia, sent by Maryland to General Washington, shall not have less than thirty-six privates to the company. (January 21, 1777.)

Every militia company, consisting of not less than thirty-six nor more than fifty privates, shall be entitled to no more than two commissioned officers; between fifty and sixty-eight, to three; of sixty-eight or more, to four. Every battalion of 500 or more privates, to three field officers; between 300 and 500, to a lieutenant-colonel and a major; between 150 and 300, to a lieutenant-colonel or major. (March 21, 1777.)

MILITARY ACTS

RELATING TO THE SEVERAL STATES DURING THE
REVOLUTIONARY WAR.

CONNECTICUT.

To send a strong reinforcement to the garrisons of Ticonderoga and Crown Point, (May 31, 1775.) Its troops now stationed at Greenwich, Stamford, and adjacent parts, to march to New York, (June 16, 1775.) All its forces, not employed at Ticonderoga and Crown Point, to march to Boston, (June 19, 1775.) To complete its quota before Boston, and to send thither the 1400 men lately voted by its Legislature, (July 19, 1775.) To raise one battalion for Canada, (January 8, 1776.) Another battalion for Canada, (January

29, 1776.) To hold its militia ready to march to New York, (March 15, 1776.) Such of its militia at New York as can be spared, to be discharged, (April 11, 1776.) To furnish 1500 militia for Canada, (June 1, 1776.) To furnish 5500 militia for the army at New York, (June 3, 1776.) To send two regular battalions to Canada, and a battalion of militia to Boston, (June 17, 1776.) To send all the militia it can spare to New York, (July 16, 1776.) Its light horse served the last campaign, (February 7, 1777.) To furnish eight battalions for the war, or for three years, (September 16, 1776.) To furnish militia to serve in the northern department till the last of November, (August 5, 1777.) To furnish and keep in Rhode Island its quota for defence of that State, (January 13, 1778.) To furnish eight battalions of regulars, and fill them up with militia engaged for nine months, which shall rendezvous at Fishkill, (February 26, 1778.) General Gates may call out its militia for defence of the Hudson, (April 15, 1778.) General Washington may call out its militia, (July 11, 1778.) To furnish eight battalions for the next campaign, (March 9, 1779.) To keep its quota in New Jersey, according to the resolution of a committee appointed by New Hampshire, Connecticut, and Massachusetts, which met at Springfield on the 30th July, 1777, (May 7, 1779.) To furnish for the next campaign 3238 men, (February 9, 1780.) To furnish five regiments of infantry and two of cavalry for the war, by the 1st of January next, (October 3, 1780.) To furnish militia for defence of Rhode Island, (July 7, 1781.)

DELAWARE.

To raise one battalion, (December 9, 1775.) Two companies to be stationed at Lewistown, (April 3, 1776.) These two companies had an engagement with the Roebuck, (before April 12, 1776.) Thirty-five men to be stationed at False Cape, (May 2, 1776.) To furnish 600 militia for a flying camp, who shall serve to 1st December, (June 3, 1776.) Her flying camp troops to march to Philadelphia, (July 4, 1776.) Delaware battalion ordered to New Jersey, (August 5, 1776.) To furnish one battalion for the war, or three years, (September 16, 1776.) An independent company to be raised and stationed at Lewistown, (April 4, 1777.) To furnish one battalion and fill it up with nine months' militia, who shall rendezvous at camp, (February 26, 1778.) M'Lane's company, late of Patton's battalion, to be incorporated with the Delaware battalion, (December 16, 1778.) To furnish one battalion for next campaign, (March 9, 1779.) To furnish 405 men for the next campaign, (February 9, 1780.) To furnish, by 1st January next, one battalion of infantry for the war, (October 3, 1780.) To raise one battalion of infantry and one corps of horse from its militia, to join the army, and serve three months, (May 31, 1781.)

GEORGIA.

To raise one battalion to serve to 31st December, 1776, (November 4, 1775.) To raise two additional battalions, (one of rifles,) on the same terms with the rest of the army, and two companies of ar-

tillery, (July 5, 1776.) To raise a battalion of rangers, (July 24, 1776.) To assist South Carolina against the Cherokees, (July 30, 1776.) To furnish one battalion for the war, or three years, (September 16, 1776.) To raise another artillery company, (February 6, 1777.) Colonel White's battalion returning to Georgia, (October 8, 1777.) To aid South Carolina with its militia, which shall be kept in the field five months, if necessary, (September 25, 1777.) To furnish one battalion for the next campaign, (March 9, 1779.) The four Georgia battalions to be re-formed, so as only to make two, (January 8, 1780.) The officers of the galleys and light dragoons to be regarded as supernumeraries under this re-formation, (Ibid.) To furnish one battalion of infantry and one of horse for the next campaign, (February 11, 1780.) General Gates may call out so many of its militia as he deems necessary, (June 14, 1780.) To furnish, by 1st January next, one regiment of infantry for the war, (October 3, 1780.)

MARYLAND.

To raise two companies of riflemen for one year, (June 13, 1775.) Its militia ordered to Accomac and Northampton, (before March 26, 1776.) To furnish 3400 militia for the flying camp, who shall serve to 1st December next, (June 3, 1776.) To raise two companies of riflemen for Colonel Stevenson's regiment, who shall serve three years, (June 27, 1776.) To raise four companies for the German battalion; her flying camp troops to march to Philadelphia, (July 4, 1776.) To raise two battalions for the war, (August 17, 1776.) To furnish eight battalions for the war, or three years, (September 16, 1776.) Its militia to join General Washington, (January 21, 1777.) To send artillery and militia to suppress the tories in Somerset and Worcester, (February 1, 1777.) Colonel Buchanan to march to the same point, (February 6, 1777.) Requested to lend its companies of artillery to the continent, (October 20, 1777.) To raise militia to guard the prisoners at Fort Frederick, (February 18, 1778.) To furnish eight regiments, with the German battalion, and fill them up with nine months' militia, to rendezvous at camp, (February 26, 1778.) General Washington may call out so many of its militia, and for such time, as he deems proper, (April 4, 1778.) Three hundred of the Eastern Shore militia to march to Delaware, (April 23, 1778.) To furnish eight battalions for the next campaign, (March 9, 1779.) To furnish 3238 men for the next campaign, (February 9, 1780.) To furnish, by the 1st January next, five regiments of infantry, (October 3, 1780.) To raise of its militia, two battalions of infantry and a corps of cavalry to join the army, and serve three months, (May 31, 1781.)

MASSACHUSETTS.

To furnish forces to guard Ticonderoga, (May 18, 1775.) To complete its quota before Boston, (June 19, 1775.) To raise a regiment of foot and a regiment of artillery for Canada, (January 29, 1776.) Five battalions now raised taken into continental pay, (May

14, 1776.) To furnish 3000 militia for Canada, (June 1, 1776.) Two thousand militia for the army at New York, (June 3, 1776.) A battalion of militia for Rhode Island, (September 3, 1776.) Fifteen battalions for the war, or three years, (September 16, 1776.) To furnish militia to the northern department, to serve to the last of November, (August 5, 1777.) To furnish General Heath 1500 militia to guard the convention prisoners, (January 12, 1778.) To furnish and keep up in Rhode Island its quota for defence of that State, (January 13, 1778.) To furnish fifteen regiments, and fill them up with nine months' militia, who shall rendezvous at Fishkill, (February 26, 1778.) General Gates may call out its militia for defence of the Hudson, (April 15, 1778.) General Washington may call out its militia, (July 11, 1778.) To furnish fifteen battalions for next campaign, (March 9, 1779.) To keep up its quota in Rhode Island, according to the resolution of a committee from New Hampshire, Conn., and Massachusetts, which met at Springfield, 30th July, 1777, (May 31, 1779.) To furnish 6070 men for the next campaign, (February 9, 1780.) To furnish ten regiments of infantry and one of artillery for the war, by 1st January next, (October 3, 1780.) To complete, on continental establishment, the artillery company at Mechias, to the number of sixty-five men, (February 15, 1781.) To furnish militia for defence of New Jersey, (July 7, 1781.)

NEW YORK.

Its militia to be trained and kept in readiness, and a number of men embodied for the defence of the city, (May 26, 1775.) To send all its troops to join General Schuyler immediately, (September 20, 1775.) To render Hudson's River defensible, and plant cannon at Morris House, above Verplanck's Point, (October 7, 1775.) To raise an artillery company for defence of Hudson's River, (October 28, 1775.) To furnish 200 militia of Dutchess, Orange, and Ulster counties, and a company of city artillery, for defence of the Highlands, (November 8, 1775.) Captain John Hansas to command at the Highlands till a successor is appointed, (November 9, 1775.) To raise one battalion for Canada, (January 8, 1776.) Ulster and Orange militia to be discharged, except those in the Fort, (January 9, 1776.) To raise four battalions, (January 19, 1776.) To hold its militia ready to march to New York, (March 15, 1776.) Such of its militia at New York as can be spared, to be discharged, (April 11, 1776.) To furnish 750 militia for Canada, (June 1, 1776.) To furnish 3000 militia for the army at New York, (June 3, 1776.) To raise another battalion for three years or the war, (June 21, 1776.) To furnish four battalions for the war, (September 16, 1776.) To furnish militia to the northern department, to serve to the last of November, (January 1, 1777.) To raise 400 militia to serve four months, (January 24, 1778.) To furnish five battalions, and fill them up with nine months' militia, who shall rendezvous at Easton, Pa., (February 26, 1778.) General Gates may call out its militia, (April 16, 1778.) General Washington may call them out, (July 11, 1778.) To furnish five

battalions for the next campaign, (March 9, 1779.) To raise on continental establishment 1000 men for defence of the western frontier, (April 1, 1779.) To furnish 1620 men for the next campaign, (February 9, 1780.) To furnish, by 1st January next, two regiments of infantry and one of artillery, for the war, (October 3, 1780.) To raise two regiments of militia to serve to 1st December next, (April 2, 1781.) Two regiments of infantry to serve three years, (Ibid.)

NEW JERSEY.

To raise two battalions for one year (October 9, 1775.) Six of its companies to garrison the Fort on the Hudson (Nov. 10, 1775.) The remainder to be put in barracks as near New York as possible (December 8, 1775.) To raise another battalion (January 10, 1776.) Col. Maxwell to march to Albany (January 8, 1776.) Col. Dayton to New York (March 14, 1776.) To hold its militia ready to march to New York (March 15, 1776.) Its militia at New York discharged (April 11, 1776.) To furnish 3300 militia for the army at New York (June 3, 1776.) To raise three more battalions for the Flying Camp. (July 20, 1776.) Its militia to join Gen. Mercer (August 6, 1776.) To furnish four battalions for the war, or for three years (September 16, 1776.) Its militia to join General Washington (February 24, 1777.) To furnish militia to the Northern department, to serve to the last of November (August 5, 1777.) To furnish four regiments and fill them up with nine months' militia, who shall rendezvous at camp (February 26, 1778.) Gen. Washington may call out so many of its militia, and for such time, as he deems proper (April 4, 1778.) To complete only three regiments under the resolution of 26th February (April 17, 1778.) Gen. Washington may call out its militia (July 11, 1778.) To furnish three battalions for the next campaign (March 9, 1779.) To furnish 1620 men for the next campaign (February 9, 1780.) 800 men to be raised at continental expense for defence of the State, (April 4, 1780.) To furnish for the war by 1st January next, two regiments of infantry (October 3, 1780.)

NEW HAMPSHIRE.

To send its quota to Boston immediately (January 19, 1775.) To complete its quota before Boston (July 19, 1775.) To raise one battalion for Canada (May 14, 1776.) To furnish 750 militia for Canada (June 1, 1776.) To send one regiment of militia to Massachusetts, two to Connecticut, and one to augment the troops in the Northern department (June 25, 1776.) To raise another regiment for Canada (June 29, 1776.) To furnish three battalions for the war, or three years, (Sept. 16, 1776.) To furnish militia to serve in the Northern department to the last of November (August 5, 1777.) To furnish and keep up in Rhode Island its quota for defence of that State (January 13, 1778.) To furnish three regiments, and fill them up with nine months' militia, who shall rendezvous at Fishkill (February 26, 1778.) Gen. Gates may call out its militia for defence of the Hudson (April 15, 1778.) General Washington may call out its militia, (July 11,

1778.) To furnish three battalions for next campaign, (March 9, 1779.) To keep its quota in Rhode Island, according to the resolution of a committee from New Hampshire, Massachusetts, and Connecticut, which met at Springfield, 30th July, 1777, (May 7, 1779.) To furnish 1215 men for the next campaign, (February 9, 1780.) May employ at continental expense 250 men in guarding the frontiers of the State, June 1, 1780.) To furnish for the war by 1st January next, two regiments of infantry, (October 3, 1780.) To furnish men for defence of New Jersey, (July 7, 1781.)

NORTH CAROLINA.

To embody its militia. May raise on continental pay a number of men not exceeding 1000, (June 24, 1775.) Its two battalions to be put on the continental establishment, and kept in pay one year from this date, (November 28, 1775.) To raise another battalion, (January 16, 1776.) One battalion raised in addition to the other five, to be taken into continental pay, (May 7, 1776.) May raise one or two more battalions, (March 26, 1776.) To assist South Carolina against the Cherokees, (January 30, 1786.) Its three independent companies of rangers received into continental pay, (July 31, 1776.) Two battalions to march to New York under General Moore, (September 3, 1776.) To furnish nine battalions for the war or three years, (September 16, 1776.) To raise 5000 militia at continental expense under General Moore, (November 16, 1776.) Generals Moore and Nash to join General Washington with its nine battalions, (February 5, 1777.) Its artillery company taken into continental pay, (July 19, 1777.) Captains Ashe, Medici and Phifer to enlist light horse for three years, or the war, (August 9, 1777.) To furnish nine battalions and fill them up with nine months' militia, who shall rendezvous at Pittsylvania Court-House and Petersburg, Va., (February 26, 1778.) The North Carolina battalion in camp to be reduced to as many as they will make complete. The State to fill up only four more battalions under the resolution of 26th February, in addition to those formed, (May 28, 1778.) To aid South Carolina with 3000 men, including the continental troops and levies now in the State; the militia to be kept in service five months, if necessary, (September 25, 1778.) To furnish 2000 men more, to be marched to Charleston, (October 17, 1778.) Its light dragoons not to be kept in continental pay after the 1st January next, (December 5, 1778.) To furnish six battalions for the next campaign, (March 9, 1779.) To raise as many regular battalions to serve one year, as its circumstances permit, for the particular defence of the Southern States, (March 29, 1779.) To furnish 3640 men for the next campaign, (February 9, 1780.) General Gates may call out as many of its militia as he thinks proper, (June 14, 1780.) To order 4000 men to join the Southern army, (June 16, 1780.) To recruit, remount and equip White's light dragoons, (June 19, 1780.) To furnish for the war four regiments of infantry by 1st January next, (October 3, 1780.) The commander in the South to retain as many of its eigh-

teen months' men as he deems necessary, (November 4, 1782.) These to be furloughed till the conclusion of the definitive treaty of peace, and then discharged, (May 23, 1783.)

PENNSYLVANIA.

To raise six companies of riflemen for one year, to join the army at Boston, (June 13, 1775.) To raise two more companies of riflemen, which, with the other six, shall form a battalion, (June 21, 1775.) Two companies of riflemen being raised in Lancaster instead of one, both are received, (July 11, 1777.) To raise one battalion for one year, (October 12, 1775.) Prisoners taken at Fort John's and Fort Chambly, to be kept in Reading, Lancaster, and York, (November 17, 1775.) In Carlisle also, (December 4, 1775.) To raise four more battalions; one company of each battalion to be riflemen, (December 9, 1775.) An additional battalion to be raised in Cumberland county, (January 4, 1776.) One of its battalions destined for Canada. Colonel Bull to march to Albany, (January 8, 1776.) Irvin, Shee, and Magaw, to take their battalions to New York, (March 14, 1776.) To furnish 6000 militia for a Flying Camp, to serve to 1st December, (June 3, 1776.) To send a battalion of provincial riflemen to Delaware, (June 13, 1776.) To raise four companies for the German battalion, (June 27, 1776.) To send as many troops as she can spare to Monmouth, N. J., (July 3, 1776.) Her Flying Camp troops to be sent to Philadelphia, except those from Bucks, Berks, and Northampton, which are to go to Brunswick. (Ib.) Its associated militia to march to Trenton, except from Northampton, which is to march to New Brunswick, and except from Westmoreland, Bedford, and Northumberland, not ordered out at all, (July 5, 1776.) To raise one battalion for defence of the Western frontier; seven companies of it in Westmoreland, and one in Bedford, (July 15, 1776.) To raise four more battalions for the Flying camp, (July 20, 1776.) Six companies to be raised for defence of Northumberland, and two for defence of the town of Westmoreland, to serve during the war, (August 23, 1776.) To furnish twelve battalions for the war, or three years, (September 16, 1776.) Some of its militia in New Jersey discharged, (before September 25, 1776.) Colonels McCoy and Cooke to join General Washington, (November 23, 1776.) The two companies raised in Westmoreland to join Gen. Washington, (December 12, 1776.) Prisoners now in Baltimore to be sent to Lancaster, (January 1, 1777.) To raise an independent company for three years, or during the war, to guard the prisoners at Lancaster, (January 18, 1777.) An independent company to be stationed at Kittaning, (January 22, 1777.) Its militia and regulars to join General Washington, (February 24, 1777.) Bull's State regiment and Proctor's State artillery transferred to the continent, (June 20, 1777.) To furnish militia to the Northern department, to serve till the last of November, (August 5, 1777.) Two companies to be raised to guard the stores at Carlisle, (October 6, 1777.) To furnish ten regiments, and fill them up with nine months' militia, who

shall rendezvous at camp, (February 26, 1778.) One company to be raised for one year, for the defence of Westmoreland, (March 16, 1778.) To station 200 militia in Easton, 100 at Bethlehem, and 200 at Reading, for defence of the military stores, until the board of war or General Washington shall discharge them, (March 19, 1778.) General Washington may call out as many of its militia, and for such time, as he deems proper, (April 4, 1778.) Four companies to be raised for one year, for defence of the Western frontier, which, with twelve companies from Virginia, shall compose two battalions, (May 2, 1778.) The troops stationed at Carlisle dismissed, (June 2, 1778.) One company to be raised for six months, for defence of Northumberland county, (June 8, 1778.) The two independent companies raised under resolution of 23d August, 1776, to form one, being very much reduced, (June 23, 1778.) To call out 300 militia, to serve in Philadelphia, (September 3, 1778.) The companies of Captains Clugage, Black, and McDonald, enlisted for defence of the Western frontier, to be re-enlisted for one year from 15th December next, (November 5, 1778.) Colonel Hartley's regiment, and the independent companies commanded by Captains Doyle, Wilkie, Steel, and Calkerwood, and the remains of Colonel Patton's regiment (except Captain McLane's company), to be incorporated, and form the 11th Pennsylvania battalion, (December 16, 1778.) To raise five companies of rangers, to serve nine months, for defence of the Western frontier, (February 25, 1779.) To furnish 11 battalions for the next campaign, (March 9, 1779.) To furnish 4855 men for the next campaign, (February 9, 1780.) To furnish six regiments of infantry, one of artillery, one of cavalry, and one of artificers, for the war, by the 1st January next, (October 3, 1780.) Convention prisoners to be removed to Pennsylvania; the British to Yorktown, the Germans to Lancaster, (March 3, 1781.) To be removed to Massachusetts, (May 23, 1781.) To furnish of the militia for three months, four battalions of infantry, one company of artillery, and a corps of horse, to join General Washington, (May 30, 1781.) To fill up Moylan's corps with three years' men, three troops of militia cavalry, including those called for on the 30th May, to serve in the South three months after joining the army, (June 12, 1781.) To furnish 300 riflemen for the present campaign, (July 2, 1781.) To order 150 men to Fort Pitt, (August 8, 1782.) Insurrection of the Pennsylvania troops, (June 21, 1783.)

RHODE ISLAND.

To send its quota to Boston immediately, (June 19, 1775.) To complete its quota before Boston, and to send thither the 360 men lately voted, (July 19, 1775.) Its two battalions taken into continental pay, (May 11, 1776.) One of its battalions to be sent to New York, (September 3, 1776.) To furnish two battalions for the war, or for three years, (September 16, 1776.) To furnish and keep up its quota for self defence, (January 13, 1777.) To furnish one battalion and fill it up with nine months' militia, who shall rendezvous at Fishkill, (February 26, 1778.) General Washington may call out

its militia, (July 11, 1778.) To furnish two battalions for the next campaign, (March 9, 1779.) To raise 1500 men on continental expense for one year, (May 4, 1779.) To furnish for the next campaign 810 men, (February 9, 1780.) To furnish for the war one regiment of infantry by 1st January next, (October 3, 1780.) To raise militia for self defence, (July 7, 1781.) Had raised in February, 1779, a brigade for one year, (May 15, 1783.)

SOUTH CAROLINA.

Three battalions to be raised and kept in South Carolina at continental expense, (November 4, 1775.) From their small number, its inhabitants have to perform very onerous militia duty, (March 25, 1776.) To raise two more continental battalions. (Ib.) Its battalion of artillery, and two battalions of foot, taken into continental pay from 4th November, and its two battalions of riflemen from 25th March last, (June 18, 1776.) Its battalion of rangers taken into continental pay, (July 24, 1776.) Cherokees had commenced hostilities against it, (before July 30, 1776.) To furnish six battalions for the war, or three years, (September 16, 1776.) To call out its militia for self defence, and to be aided by Virginia, South Carolina, and Georgia, (September 25, 1778.) To furnish six battalions for the next campaign, (March 9, 1779.) To furnish for the next campaign 2430 men, exclusive of blacks, (February 9, 1780.) General Gates may call out as many of its militia as he thinks proper, (June 14, 1780.) To furnish for the war, by 1st January next, two regiments of infantry, (October 3, 1780.)

VIRGINIA.

To raise two companies of riflemen for one year, (June 13, 1775.) To raise six battalions, (December 28, 1775.) Captain Nelson's independent company of riflemen to be sent to Canada, (January 30, 1776.) The pay of two of the battalions to commence from 1st of November last, (February 13, 1776.) To raise a company of artillery under Captain Arundel, (March 19, 1776.) Its three colonial battalions received on continental establishment, (March 25, 1776.) To raise a battalion of riflemen, (May 18, 1776.) To raise four companies of riflemen for Stevenson's regiment, to serve three years, (June 27, 1776.) Eighth battalion on continental pay from 13th June, (August 13, 1776.) To assist South Carolina against the Cherokees, (July 30, 1776.) Three battalions ordered to New York, Colonel Stephens' to be one of them, (September 3, 1776.) To furnish fifteen battalions for the war, or for three years, (September 16, 1776.) The battalion on the Eastern Shore to march to Philadelphia, (November 23, 1776.) Its light-horse to join General Washington, (November 25, 1776.) To raise a regiment of artillery, to be armed with muskets, (November 26, 1776.) The West Augusta battalion and Colonel Moore's to join General Washington in New Jersey. Forts Pitt and Randolph to be garrisoned with 100 men at

continental expense, (January 8, 1777.) Prisoners to be sent to Leesburgh, (January 13, 1777.) Its light-horse to be taken into continental pay from 25th November, (January 14, 1777.) Muhlenburg's battalion ordered from South Carolina, (January 20, 1777.) Captain Scott, of Fauquier county, with his volunteers, received for three months, (February 17, 1777.) Second Virginia battalion to march from Baltimore to Worcester, and then join General Washington, (February 7, 1777.) To furnish fifteen battalions, and fill them up with nine months' militia, who shall rendezvous at Alexandria and Shepherdstown, (February 26, 1778.) The portion of its quota raised in Accomac and Northampton, to continue there for the protection of the public stores. (Ib.) Harrison's artillery to join General Washington, (September 12, 1778.) To raise twelve companies for one year, for defence of the Western frontiers, which, with four from Pennsylvania, shall form two regiments, (May 2, 1778.) The infantry, voted by the assembly to reinforce the main army, not needed, but those in the vicinity of the frontier, with a troop of cavalry, to join General McIntosh at Fort Pitt, (July 25, 1778.) To aid South Carolina with 1000 men, including all the continental troops now in the State, the militia to be kept five months, (September 25, 1778.) To furnish a guard for the convention prisoners at Charlottesville, (October 16, 1778.) A battalion of 600 men to be raised for one year, to guard said prisoners, (January 9, 1779.) To furnish eleven battalions for the next campaign, (March 9, 1779.) To raise for one year as many regular battalions as its circumstances permit, for the particular defence of the Southern States, (March 29, 1779.) The governor had ordered a new raised battalion of infantry and a troop of horse to guard the prisoners at Charlottesville, (December 10, 1779.) To furnish 6,070 men for the next campaign, (February 9, 1780.) General Gates may call out as many of its militia as he thinks proper, (June 14, 1780.) To order 5000 militia to join the Southern army, (June 16, 1780.) To furnish for the war by the 1st January next, eight regiments of infantry, one of artillery, and two of cavalry, (October 3, 1780.) The convention prisoners to be removed to the North. Virginia to order 150 men to Fort Pitt, (August 8, 1782.)

REVOLUTIONARY PAY-TABLE.

PAY.

No officer holding two appointments, in the revolutionary army, to receive pay for more than one. (Journals of Congress, October 13, 1776.)

This relates to officers in the line, and was repealed by the act reorganizing the army, in May, 1778.

Officers of troops enlisted for three years, or during the war, shall receive pay from the time of their appointments by their respective States, according to the resolution of September 16, 1776, which increased the pay. (J. C., December 21, 1776.)

Brevet-rank confers no additional pay. (J. C., April 30, 1778.)

Officers of the navy, though not in actual service, shall still receive their pay. (January 19, 1778.)

Officers or soldiers released on parole shall receive pay till their return home. (Journals of Congress, May 15, 1777.)

Officers released on parole shall receive pay for the term the men under them had engaged to serve. (January 19, 1778.)

Naval officers on parole entitled to the same. (March 20, 1778.)

Land officers on parole shall receive pay untill they are exchanged, although the term for which their men enlisted may have expired. (May 19, 1778.)

AID-DE-CAMP. Pay, per month, \$33. (June 16, 1775.)

To Commander-in-Chief, \$40. (April 26, 1776.)

To Commander-in-Chief, to rank as Colonel; to a Major-General, as Major. (June 5, 1776.)

Pay equal to those of officers of the same rank. (March 24, 1777.)

To be taken from captains or subalterns, and receive the pay of Major. (June 28, 1782.)

ARTIFICERS. See December 2, 1775; February 11, and September 17, 1776; February 4 and 11; March 4 and 29, 1778.

Q. M. Artificer, pay of Regimental Q. M. (November 11, 1777.)

Flowers' Artillery Artificers, if enlisted for three years, or during the war, pay, per month, \$20. (February 11, 1778.)

Officers, pay of Artillery officers. (Same date.)

Commanding officer, pay of Lieutenant-Colonel. (Same date.)

Director, per month, \$40. (March 29, 1781.)

Sub-Director, " \$26⁸/₉. " "

ARMORER (Navy). Pay, per month, \$15. (December 9, 1775.)

" " " \$9. (November 15, 1776.)

ADJUTANT-GENERAL. Pay, per month, \$125. (June 16, 1775.)

Deputy A.-G. " " \$50. (July 29, 1775.)

Regimental. " " \$18¹/₂. " "

" " of Captain. (September 19, 1776.)

" " per month, \$40. (October 7, 1776.)

" To be taken from the line, and, in addition to line pay, to receive, in the Infantry, \$13; Cavalry, \$15; Artillery, \$16, per month. (May 27, 1778.)

" Assistant to A.-G., pay of Colonel. (May 17, 1779.)

BARRACK-MASTER. See January 9, and February 5, 1776.

General. Pay, per month, \$75. (May 14, 1777.)

Department abolished. (January 20, 1780.)

BATTEAU-MEN. See February 5, March 8, and December 28, 1776.

BAKERS. Director, pay, per month, \$50. (February 27, 1778.)

Sub-Director, " " \$40. " "

Foreman, " " \$30. " "

Baker, " " \$24. " "

BRIGADE-MAJOR. Pay, per month, \$33. (July 29, 1775.)

" " \$50. (April 11, 1777.)

To be a Captain, and receive, in addition to line pay, \$24. (May 27, 1778.)

BOMBARDIER. Pay, per month, \$7. (July 29, 1775.)

" " \$9. (May 27, 1778.)

BOATSWAIN. " " \$15. (November 28, 1775.)

On vessels of 20 guns, \$15; between 10 and 20, \$13; under 10, \$12. (November 15, 1776.)

BOATSWAIN'S MATE (1st). Pay, per month, \$9½. (November 28, 1775.)

" " (2d). " " \$8. " "

On vessels of 20 guns, \$9½; between 10 and 20, \$9; under 10, \$9.

CAPTAIN (*Infantry*). Pay, per month, \$20. (June 14, 1775.)

In marching regiments, \$26¾. (November 4, 1775.)

All Captains in the army, \$40. (October 7, 1776.)

(*Artillery*). Pay, per month, \$26¾. (July 29, 1775.)

" " " \$50. (May 27, 1778.)

(*Rangers*). Pay of Major. (July 24, 1776.)

(*Cavalry and Dragoons*). Pay, per month, \$50. (March 14, 1777.)

(*Provosts, Engineers, Sappers, and Miners*). Pay, per month, \$50. (May 27, 1778.)

(*Navy*). Pay per month, \$32. (November 28, 1775.)

On vessels of 20 guns, \$60; between 10 and 20, \$48. (November 15, 1776.)

(*Marines*). Pay, per month, \$26¾. (November 28, 1775.)

" " " \$30. (November 15, 1776.)

CHAPLAIN. Pay, per month, \$20. (July 29, 1775.)

" " \$33¾. (July 5, 1776.)

" " \$40. (April 11, 1777.)

(*Brigade*). Pay of a Colonel. (May 27, 1777.)

(*Navy*). " per month, \$20. (November 28, 1775.)

(*Dragoons*). " " \$50. (March 14, 1777.)

(*Hospital*). " " \$60. (September 18, 1777.)

CARPENTER (*Navy*). Pay, per month, \$15. (November 28, 1775.)

On vessels of 20 guns, \$15; between 10 and 20, \$13; under 10, \$12. (November 15, 1776.)

CARPENTER'S MATE. Pay, per month, \$10½. (November 28, 1775.)

On vessels of 20 guns, \$9½; under 20, \$9. (November 15, 1776.)

CLERK (*Navy*). Captain's, pay, per month, \$15. (November 28, 1775.)

On vessels of 20 guns, \$15; under 20, \$12. (November 15, 1776.)

(*Issuing Store*). (1st) ¼ per day; others, ⅓ per day. (May 24, 1776.)

(*Surgeon-General's and Paymaster's*). Per day, \$2. (April 8, 1777.)

Assistant *do. to do.*, per day, \$0.66¾. (Same date.)

(*Of Com'y of A. C. G.*). Per month, \$35. (June 16, 1777.)

" " \$50. (August 7, 1777.)

(*Of Ass't Com'y*). Per month, \$50. (May 11, 1779.)

(*Of Provosts*). " " \$33¾. (May 27, 1778.)

(*Of Com'y of Military Stores*). Per month, \$40. (February 11, 1778.)

(*Of Field-Commissary*). Per month, \$40. (February 18, 1779.)

CLERK (*continued*).

(*Of Clothier-General*). Pay of Army Auditor's Clerk. (April 15, 1779.)
 (*Of the Scales*). Pay, per month, \$35. (May 11, 1779.)
 (*Of Adj't-Gen'l*). Pay of Captain. (May 17, 1779.)

COMMISSARY (*General, of Stores and Provisions*). Pay, per month, \$80. (June 16, 1775.)

(*Deputy do.*) Pay, per month, \$60. (July 29, 1775.)
 (*General, of Purchases*). Pay, per day, \$8. (June 16, 1777.)
 (*Deputy do.*) " " \$5. " "
 (*Assistant*). " " \$4. " "

All Purchasing Commissaries allowed a commission instead of salary. (March 13, 1778.)

(*A. C. G. of P., at Head-Quarters*). Pay, per day, \$5. (April 14, 1778.)

(*C. G. of P.*) Pay, per annum, \$4,000. (January 1, 1780.)

(*D. C. G. of P.*) " per month, \$125. (November 30, 1780.)

(*A. C. of P.*) " " \$75. " "

(*Superintendent of Live Stock*). Pay, per month, \$50. (November 30, 1780.)

Deputies employed by said Superintendents, pay, per month, \$27. (June 16, 1777.)

(*Of Musters*). Pay, per month, \$40. (June 16, 1775.)

" " of Colonel. (August 7, 1777.)

(*Dep'y C. G. of do.*) Pay, per month, \$100. (August 7, 1777.)

(*Dep'y C. of do.*) " " \$60. " "

(*Of Artillery*). " " \$30. (July 29, 1775.)

(*D. C. of do, in E. Department*). Pay, per month, \$33 $\frac{1}{3}$. (March 14, 1777.)

(*D. C. of Stores at N. Y.*) " " \$30. (October 9, 1776.)

(*C. G. of do.*) " " \$100. (February 11, 1778.)

(*D. C. G. of do.*) " " \$60. " "

(*A. C. of do.*) " " \$50. " "

(*C. of Clothing*). Pay of Major. (October 16, 1776.)

(*C. to Surgeon*). " per day, \$2. (April 8, 1777.)

(*C. G. of Prisoners*). Pay of Colonel. (June 5, 1777.)

(*D. C. of do.*) " of Major. " "

(*C. G. of Issues*). Pay, per month, \$150. (June 16, 1777.)

(*D. C. of do.*) " " \$75. " "

(*Assist. C. of do.*) " " \$40. " "

" " " " \$60. " "

(*C. G. of Hides*). " " \$80. (June 20, 1777.)

(*A. C. G. of do.*) " " \$140. (July 23, 1779.)

(*D. C. of Forage*). " " \$200. (May 11, 1779.)

(*A. C. of do.*) " " \$140. " "

(*D. C. of do.*) " " \$40. (July 15, 1780.)

(*Field Com'y*). " " \$90. (January 12, 1781.)

(*Deputy do.*) " " \$70. " "

(*Inspector of Cattle*). Pay, per day, \$4. (January 17, 1780.)

See July 19, 1775; July 8, October 7, October 9, October 16, October 21, December 27, 1776; April 4, June 16, July 2, October 4, 6, 11, 1777; March 13, 1778; January 1 and 7, 1780.

CORPORAL (*Infantry*). Pay, per month, \$7 $\frac{1}{2}$. (June 14, 1775.)

(*Artillery*). " " \$7 $\frac{1}{2}$. (July 29, 1775.)

" " " " \$9. (May 27, 1778.)

(*Marines*). " " \$7 $\frac{1}{2}$. (November 28, 1775.)

(*Cavalry and Dragoons*). Pay, per month, \$10. (March 14, 1777.)

(*Engineers, Sappers, and Miners*). Pay, per month, \$9. (May 27, 1778.)

(*Provosts*). Pay, per month, \$10. (May 27, 1778.)

CORNET. Pay, per month, \$26 $\frac{2}{3}$. (May 27, 1778.)

COXSWAIN. Pay, per month, \$9. (December 9, 1775.)

COLONEL. Pay, per month, \$50. (July 29, 1775.)

(*Lieutenant do.*) Pay, per month, \$40. (July 29, 1775.)

" " " " \$60. (October 7, 1776.)

- COOPER (*Navy*). Pay, per month, \$15. (November 28, 1775.)
 " " \$9. (November 15, 1776.)
- COOK (*Navy*). Pay, per month, \$12. (December 9, 1775.)
 On vessels of 20 guns, \$9; under 20, \$8½. (November 15, 1776.)
- CLOTHIER (*General*). Pay, per annum, \$3,000. (April 5, 1779.)
 (*Assistant*). Pay, per month, \$50. (August 29, 1777.)
 (*Regimental*). In addition to line pay, \$30. (April 5, 1779.)
 See December 27, 1776; August 28, 1778; March 23, 1779; June 18, 1781.
- CONDUCTOR (*of Artillery*). See February 5, and July 5, 1777.
 " Pay, per month, \$40. (February 18, 1779.)
 (*Assistant, of Military Stores*). Lieutenant's pay. (July 5, 1776.)
 (*Of Military Stores*). Pay, per month, \$40. (February 11, 1778.)
 " " " \$45. (January 12, 1782.)
 (*Of Field Commissary*) " " \$45. " "
- DRUMMER (*Infantry*). Pay, per month, \$7½. (June 14, 1775.)
 (*Marines*). Pay, per month, \$7½. (November 28, 1775.)
 (*Cavalry*). " " \$8½. (May 27, 1778.)
- DRUM-MAJOR (*Infantry*). Pay, per month, \$9. (May 27, 1778.)
 (*Cavalry*). Pay, per month, \$10⅔. (May 27, 1778.)
- EXECUTIONER (*Provost's*). Pay, per month, \$10. (May 27, 1778.)
- EXPRESS-RIDER. Pay, per month, \$40. (May 27, 1778.)
- ENGINEER (*Chief*). Pay, per month, \$60. (June 16, 1775.)
 (*Assistant*). " " \$20. " "
 " " " \$26⅔. (January 16, 1776.)
 " " " \$30. (May 18, 1776.)
 Pay equal to the same rank in Artillery. (May 11, 1779.)
- ENSIGN. Pay, per month, \$10. (July 29, 1775.)
 (*In marching regiment*). Pay, per month, \$13⅓. (November 4, 1775.)
 " " \$20. (October 7, 1776.)
- FARRIER (*Dragoons*). Pay, per month, \$10. (March 14, 1777.)
 (*Cavalry*). Pay, per month, \$10. (May 27, 1778.)
- FIFER (*Infantry*). Pay, per month, \$7½. (July 29, 1775.)
 (*Marines*). " " \$7½. (November 28, 1775.)
 (*Cavalry*). " " \$8½. (May 27, 1778.)
- FIFE-MAJOR (*Infantry*). Pay, per month, \$8½. (July 16, 1776.)
 (*Cavalry*). Pay, per month, \$10⅔. (May 27, 1778.)
- FORAGE-MASTER. Pay, per month, \$40. (May 14, 1777.)
 " " \$80. (May 11, 1779.)
 In addition to line pay, \$10. (July 15, 1780.)
- GENERAL (*Major*). Pay, per month, \$166. (June 16, 1775.)
 (*Brigadier*). " " \$125. " "
- GUNNER. Pay, per month, \$15. (November 28, 1775.)
 On vessels of 20 guns, \$15; between 10 and 20, \$13; under 10, \$12. (November 15, 1776.)
- GUNNER'S MATE. Pay, per month, \$10½. (November 28, 1775.)
 On vessels of 20 guns, \$9½; between 10 and 20, \$9; under 10, \$8. (November 15, 1776.)
- GUNNER (*Quarter*). Pay, per month, \$8. (December 9, 1775.)
 (*Cavalry*). " " \$8½. (May 27, 1778.)
- HOSPITAL. Director-General and Chief Physician, pay, per day, \$4. (July 27, 1775.)

HOSPITAL (*continued*).

Surgeon,	Pay, per day,	\$1 $\frac{1}{2}$.	(July 27, 1775.)
Apothecary,	" "	\$1 $\frac{1}{2}$.	" "
Surgeon's Mate,	" "	\$0.66 $\frac{2}{3}$.	" "
Storekeeper,	" per month,	\$4.	" "
Nurse,	" "	\$2.	" "
Deputy Director-General,	pay, per day,	\$5.	(April 8, 1777.)
Assistant do.	" "	\$4.	(February 6, 1778.)
Commissary,	" "	\$4.	" "
Ward-Master,	" "	\$1.	" "
Assistant Purveyor,	" per month,	\$75.	(September 30, 1780.)
Assistant Apothecary,	" "	\$75.	" "
Steward,	" "	\$35.	" "
Ward-Master,	" "	\$25.	" "
Surgeon's Mate,	" "	\$50.	" "
"	" "	\$42.	(December 3, 1782.)
Steward,	" "	\$31.	" "
Ward-Master,	" "	\$21.	" "

INSPECTOR (*of more than one Brigade*). In addition to line pay, \$30. (May 5, 1777.)
 (*Of one Brigade*). In addition to line pay, \$20. (May 5, 1778.)
 (*General*). Pay, per month, \$250. (February 18, 1779.)
 (*Assistant*). " " \$30. (December 4, 1780.)
 " In addition to line pay, \$10. (January 10, 1782.)
 (*Of Cattle*). Pay, per day, \$4. (January, 17, 1780.)

JUDGE-ADVOCATE. Pay, per month, \$20. (July 29, 1775.)
 " " \$60. (April 11, 1777.)
 (*Deputy*). In addition to line pay, \$15. " "

LIEUTENANT (*Infantry*). Pay, per month, \$13 $\frac{1}{2}$. (June 14, 1775.)
 " " " \$26 $\frac{2}{3}$. (October 7, 1776.)
 (*Artillery*). Pay, per month, \$26 $\frac{2}{3}$. (July 29, 1775.)
 " " " \$33 $\frac{1}{2}$. (May 27, 1778.)
 (*Marines*). " " \$18. (November 4, 1775.)
 (*Purveyors*). " of Captain. (July 24, 1776.)
 (*Cavalry and Dragoons*). Pay, per month, \$33 $\frac{1}{2}$. (March 14, 1777.)
 (*Navy*). Pay, per month, \$20. (November 4, 1775.)
 On vessels of 20 guns, \$34; between 10 and 20, \$24; under 10, commanding, \$30. (November 15, 1776.)
 Provosts, Engineers, Sappers, and Miners, pay, per month, \$33 $\frac{1}{2}$. (May 2, 1778.)

MATROSS. Pay, per month, \$6 $\frac{5}{8}$. (July 29, 1775.)
 " " \$8 $\frac{1}{2}$. (May 27, 1778.)

MAJOR. Pay, per month, \$40. (July 29, 1775.)
 (*Rangers*). Pay of Lieutenant-Colonel. (July 24, 1776.)
 (*Infantry*). Pay, per month, \$50. (October 7, 1776.)

MASTER (*Navy*). Pay, per month, \$20. (November 28, 1775.)
 On vessels of 20 guns, \$30; under 20, \$24. (November 15, 1776.)

MATE (*Navy*). Pay, per month, \$15. (November 28, 1775.)

MASTER-AT-ARMS. On vessels of 20 guns, pay, per month, \$10; under 20, \$ (November 15, 1776.)

MUSTER-MASTER (*General*). Pay, per month, \$40. (July 29, 1775.)
 " " " \$50. (April 4, 1777.)
 Muster-Master, pay, per month, \$35. (April 4, 1777.)
 " " " \$45. (August 6, 1777.)
 Commissary of Musters, pay, per month, \$40. (June 16, 1775.)
 C. G. of do. " " \$60. (April 4, 1777.)
 Department abolished. (January 12, 1780.)

PAY-MASTER (*General*). Pay, per month, \$100. (June 16, 1775.)

(*Deputy do.*) " " \$50. " "
 (*Ass't to Dep'y do.*) " " \$26½. (January 9, 1776.)
 (*P. M. to Va. troops*). " " \$50. (February 15, 1776.)
 (*Do. in N. dep't.*) " " \$75. (January 30, 1777.)
 (*P. M. of Rangers*). " " \$26½. (July 24, 1776.)
 (*Of Dragoons*). " " \$50. (March 14, 1777.)
 (*Regimental*). " " \$40. (March 29, 1777.)

In the Infantry, \$20; Artillery and Cavalry, \$25, in addition to line pay. (May 27, 1778.)

All Regimental Paymasters; in addition to line pay, per month, \$30. (January 12, 1781.)

(*Assistant to P.-M. G. and D. P.-M. G.*) Pay, per month, \$50. (August 28, 1779.)

PILOT. Pay according to the usual rate. (December 9, 1775.)

PRIVATE (*Infantry*). Pay per month, \$6½. (June 14, 1775.)

(*Marines*). " " \$6½. (November 28, 1775.)
 (*Rangers*). " " \$12½. (July 24, 1776.)
 (*Cavalry and Dragoons*). Pay, per month, \$8½. (March 14, 1777.)
 (*Artillery, Provosts, and Engineers*). Pay, per month, \$8½. (May 27, 1778.)

PROVOST-MARTIAL. (See January 29, 1775.)

PURSER. Pay equal to that of Navy Surgeon. (November 18, 1778.)

QUARTER-MASTER (*General*). Pay, per month, \$80. (June 16, 1775.)

(*Deputy do.*) " " \$40. " "
 (*Do. in N. department*). " " \$60. (April 11, 1777.)
 (*Deputy do.*) " " \$20. (May 13, 1779.)
 (*Regimental*). " " \$18½. (July 29, 1775.)
 (*Do.*) " " \$27½. (October 7, 1776.)
 (*Cavalry*). " " \$16½. (March 14, 1777.)
 (*Dragoons*). " " \$50. " "
 (*Regimental*). In the Infantry, pay, per month, \$13; Cavalry, \$15; Artillery, \$16; in addition to line pay. (May 27, 1778.)
 (*Navy*). Pay, per month, \$9. (December 9, 1775.)
 On vessels of 20 guns, \$9; under 20, \$8½. (November 15, 1776.)
 (*Assistant Q.-M.*) Pay of Captain. (June 5, 1776.)
 " " per month, \$40. (May 14, 1777.)
 " " " \$140. (May 13, 1779.)
 (*Brigade*). In addition to line pay, \$15. (November 24, 1778.)
 " " " \$20. (July 15, 1780.)
 (*Assistant in Q.-M. dep't.*) Pay, per month, \$30. (October 23, 1782.)

RIDING-MASTER (*Dragoons*). Pay, per month, \$33½. (March 14, 1777.)

(*Cavalry*). Pay, per month, \$33½. (May 27, 1778.)

SAIL-MAKER. Pay, per month, \$12. (December 9, 1775.)

" " \$10. (November 15, 1776.)

SAIL-MAKER'S MATE. Pay, per month, \$8½. (November 15, 1776.)

SADDLER (*Dragoons*). Pay, per month, \$10. (March 14, 1777.)

(*Cavalry*). Pay, per month, \$10. (May 27, 1778.)

SAPPERS AND MINERS. Same pay as Engineers. (May 27, 1778.)

SECRETARY (*to the General*). Pay, per month, \$66. (June 16, 1775.)

(*To a Major-General*). " " \$33. " "

SERGEANT (*Infantry*). Pay, per month, \$8. (June 14, 1775.)

(*Infantry and Engineers*). Pay, per month, \$10. (May 27, 1778.)

SERGEANT (*continued*).

(<i>Artillery</i>).	Pay, per month,	\$8 $\frac{1}{2}$.	(July 27, 1775.)
"	"	"	\$10 $\frac{2}{3}$. (May 27, 1778.)
(<i>Marines</i>).	"	"	\$8. " "
(<i>Cavalry</i>).	"	"	\$15. (March 14, 1777.)

 SERGEANT-MAJOR (*Cavalry*). Pay, per month, \$9. (July 16, 1776.)

(<i>Artillery</i>).	Pay, per month,	\$11 $\frac{2}{3}$.	(May 27, 1778.)
(<i>Infantry</i>).	"	"	\$10. " "

 QUARTER-MASTER SERGEANT (*Infantry*). Pay, per month, \$10. (May 27, 1778.)

(<i>Artillery</i>).	Pay, per month,	\$11 $\frac{2}{3}$.	(May 27, 1778.)
(<i>Cavalry, Engineers, and Provosts</i>).	Pay, per month,	\$15.	(May 27, 1778.)

 DRILL-SERGEANT (*Dragoons*). Pay, per month, \$15. (March 14, 1777.)

STEWARD (<i>Navy</i>).	Pay, per month,	\$13 $\frac{1}{2}$.	(November 28, 1775.)
"	"	"	\$10. (November 15, 1776.)
(<i>To Surgeon-General</i>).	Pay, per day,	\$1.	(April 8, 1777.)

SEAMAN.	Pay, per month,	\$6 $\frac{3}{4}$.	(November 28, 1775.)
"	"	"	\$8. (December 13, 1775.)

 STORE-KEEPER (*to Hospital*). Pay, per day, \$4. (January 27, 1775.)
 See January 9, February 5, and May 24, 1776.

 SURGEON (*Navy*). Pay, per month, \$21 $\frac{1}{2}$. (November 28, 1775.)

On vessels of 20 guns, \$25; under 20, \$21 $\frac{1}{2}$. (November 15, 1776.)

Pay equal to that of Lieutenant of the same vessel. (July 16, 1777.)

(<i>Army</i>).	Pay, per month,	\$25.	(December 8, 1775.)
(<i>Regimental</i>).	Pay, per month,	\$33 $\frac{1}{2}$.	(June 5, 1776.)
"	"	per day,	\$2. (April 8, 1777.)
(<i>Infantry and Cavalry</i>).	Pay, per month,	\$60.	(May 27, 1778.)
(<i>Artillery</i>).	Pay, per month,	\$75.	(May 27, 1778.)
(<i>Dragoons</i>).	"	"	\$60. (March 14, 1777.)
(<i>In Hospital</i>).	Pay, per day,	\$1 $\frac{3}{4}$.	(July 17, 1776.)
(<i>General</i>).	"	"	\$5. (April 8, 1777.)
(<i>Senior</i>).	"	"	\$4. " "
(<i>Second</i>).	"	"	\$2. " "
(<i>Commissary to</i>).	"	"	\$2. " "
(<i>Clerk, who is Pay-Master</i>).	Pay, per day,	\$2.	(April 8, 1777.)
(<i>Assistant Clerk</i>).	"	"	\$0.66 $\frac{2}{3}$. " "

 SURGEON'S MATE (*Navy*). Pay, per month, \$13 $\frac{1}{2}$. (November 28, 1775.)

On vessels of 20 guns, \$15; under 20, \$13 $\frac{1}{2}$. (November 15, 1776.)

(<i>Regimental</i>).	Pay, per day,	\$1 $\frac{1}{2}$.	(April 8, 1777.)
(<i>Infantry and Cavalry</i>).	Pay, per month,	\$40.	(May 27, 1778.)
(<i>Artillery</i>).	"	"	\$50. " "
(<i>Infantry and Cavalry</i>).	"	"	\$45. (September 30, 1780.)
"	"	"	\$40. (March 19, 1782.)
(<i>Dragoons</i>).	"	"	\$40. (March 14, 1777.)
(<i>In Hospital</i>).	Pay, per day,	\$1.	(July 17, 1776.)
"	"	per month,	\$50. (September 30, 1780.)

 SUPERINTENDENT (*of Army*). (See February 5, 1776.)

(<i>Of Live Stock</i>).	Pay, per month,	\$50.	(November 30, 1780.)
(<i>Deputies employed by same</i>).	Pay, per month,	\$27.	(June 16, 1777.)

 TRUMPETER. Pay, per month, \$7 $\frac{1}{2}$. (June 14, 1776.)

(<i>Cavalry and Dragoons</i>).	Pay, per month,	\$10.	(March 14, 1777.)
(<i>Provosts</i>).	Pay, per month,	\$10.	(May 27, 1778.)

 TRUMPET-MAJOR (*Dragoons*). Pay, per month, \$11. (March 14, 1777.)


(<i>Cavalry</i>).	Pay, per month,	\$11.	(May 27, 1778.)
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WAGON-MASTER (<i>General</i>).	Pay, per month,	\$75.	(May 11, 1777.)
(<i>Deputy do.</i>)	" "	\$50.	" "
(<i>W.-M.</i>)	" "	\$40.	" "
"	" "	\$80.	(May 11, 1779.)
(<i>Ass't D. W.-M. G.</i>)	" "	\$45.	(July 15, 1780.)
(<i>Ass't W.-M.</i>)	" "	\$40.	" "

See July 29, 1775; March 16, April 23, 1779; January 14, 1780.

WAGON-CONDUCTOR.	Pay, per month,	\$40.	(May 11, 1777.)
	" "	\$35.	(July 15, 1780.)
If taken from the line, additional pay,		\$12.	" "
	Pay, per month,	\$20.	(October 23, 1782.)


YEOMAN.	Pay, per month,	\$9.	(December 9, 1775.)
(<i>Of Powder-Room</i>).	On vessels of 20 guns,	\$9½;	under 20, \$9. (November 15, 1776.)

 The references in this Table are made to the Journals of the Continental Congress.

As it is intended solely for the computation of pensions, none of which can exceed for each month's service the half of fifty dollars, whenever any officer always received that sum, or, having at first received less, was afterwards raised to that amount and never subsequently placed below it, I have not attempted, in such case, to trace the mutations of the salary he received.

PART II.

ARMY INVALID PENSIONS.

 IT is to be observed that the act of June 16, 1840, together with the decisions relating to the distribution of fractions of pension due a deceased pensioner, given under the head of General Principles relating to Revolutionary Pensioners, is equally applicable to all the classes of pensioners hereafter to be treated of.

No. 1.

INVALIDS OF THE REVOLUTIONARY WAR.

On the 26th of August, 1776, Congress promised to the officers and soldiers of the army and navy who might be disabled in the service a pension to continue during the continuance of their disability.

On the 7th of June, 1785, it was recommended that the several States should make provision for the army, militia, and navy invalids resident in them, to be reimbursed by Congress.

After the adoption of the present Constitution, Congress passed several acts for the relief of these invalids, all which were repealed by the following one: —

An act to provide for persons who were disabled by known wounds received in the revolutionary war.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any commissioned or non-commissioned officer, musician, soldier, marine or seaman, disabled in the actual service of the United States, while in the line of his duty, by known wounds received during the revolutionary war, and who did not desert the service; or who, in consequence of disability as aforesaid, resigned his commission or took discharge; or who, after incurring disability as aforesaid, was taken captive by the enemy, and remained either in captivity or on parole until the close of said revolutionary war; or who, in consequence of

known wounds received as aforesaid, has, at any period since, become and continued disabled in such manner as to render him unable to procure a subsistence by manual labor; whether such officer, musician, soldier, marine, or seaman, served as a volunteer, in any proper service against the common enemy, or belonged to a detachment of the militia, which served against the common enemy, or to the regular forces of the United States, or of any particular State, he shall, upon substantiating his claim, in the manner hereinafter described, be placed on the pension list of the United States, during life, or the continuance of such disability, and be entitled, under the regulations hereinafter mentioned, to receive such sum as shall be found just and proper, by the testimony adduced.

SEC. 2. *And be it further enacted*, That, in substantiating such claim, the following rules and regulations shall be complied with, that is to say: All evidence shall be taken on oath or affirmation, before the judge of the district, or one of the judges of the territory in which such claimant resides, or before some person specially authorized by commission from said judge.

Decisive disability, the effect of a known wound or wounds, received while in the actual service and line of duty against the common enemy, during the revolutionary war, must be proved by the affidavit of the commanding officer of the regiment, corps, company, ship, vessel, or craft, in which such claimant served; or of two credible witnesses to the same effect, setting forth the time when, and place where, such wound or wounds were received, and particularly describing the same.

The nature of such disability, and in what degree it prevents the claimant from obtaining his subsistence, must be proved by the affidavit of some reputable physician or surgeon, stating his opinion, either from his own knowledge and acquaintance with the claimant, or from an examination of such claimant on oath or affirmation; which, when necessary for that purpose, shall be administered to said claimant by said judge or commissioner. And the said physician or surgeon, in his affidavit, shall particularly describe the wound or wounds from whence the disability appears to be derived.

Every claimant must prove, by at least one credible witness, that he continued in service during the whole time for which he was detached, or for which he engaged, unless he was discharged, or left the service in consequence of some derangement of the army, or, in consequence of his disability, resigned his commission; or was, after his disability, in captivity or on parole, until the close of the revolutionary war. And in the same manner must prove his mode of life and employment since he left the service, and the place or places where he has since resided, and his place of residence at the time of taking such testimony.

Every claimant shall, by his affidavit, give satisfactory reasons why he did not make application for a pension before, and that he is not on the pension list of any State; and the judge or commissioner shall certify, in writing, his opinion of the credibility of the witnesses whose affidavits he shall take, in all those cases where, by

this act, it is said the proof shall be made by a credible witness witnesses; and, also, that the examining physician or surgeon reputable in his profession.

SEC. 3. *And be it further enacted*, That the said judge of t district, or person by him commissioned as aforesaid, shall trans a list of such claims, accompanied by the evidence, affidavits, certi cates, and proceedings had thereon in pursuance of this act, notin particularly the day on which the testimony was closed before hi to the Secretary for the Department of War, that the same may compared with muster rolls, or other documents in his office; and t said Secretary shall make a statement of all such cases, which, t gether with all the testimony, he shall, from time to time, trans to Congress, with such remarks as he may think proper, that Co gress may be enabled to place such claimants on the pension list shall be found entitled to the privilege. And it shall be the duty the judge, or commissioner aforesaid, to permit each claimant to ta a transcript of the evidence and proceedings had respecting l claim, if he shall desire it, and to certify the same to be correct.

SEC. 4. *And be it further enacted*, That every pension, or increa thereof, by virtue of this act, shall commence on the day when t claimant shall have completed his testimony before the authori proper to take the same.

SEC. 5. *And be it further enacted*, That an increase of pensi may be allowed to persons already placed upon the pension list the United States, for disabilities caused by known wounds receive during the revolutionary war, in all cases where justice shall requi the same: *Provided*, That the increase, when added to the pensio formerly received, shall in no case exceed a full pension.

Every invalid making application for this purpose, shall be e amined by two reputable physicians or surgeons, to be authorize by commission from the judge of the district where such inval resides; who shall report, in writing, on oath or affirmation, the opinion of the nature of the applicant's disability, and in what degr it prevents him from obtaining a subsistence by manual labor; whic report shall be transmitted, by said physicians or surgeons, to tl Secretary for the Department of War, who shall compare the san with the documents in his office, and shall make a statement of a such cases, which, together with the original report, he shall, fro time to time, transmit to Congress, with such remarks as he may thir proper, that they may be enabled to do justice to such pensioners.

SEC. 6. *And be it further enacted*, That a full pension given b this act to a commissioned officer, shall be one-half of the monthl pay, legally allowed, at the time of incurring said disability, to h grade in the forces raised by the United States; and the proportion less than a full pension, shall be the correspondent proportions o said half pay; and a full pension to a non-commissioned offic musician, soldier, marine, or seaman, shall be five dollars a montl and the proportions, less than a full pension, shall be the like propor tions of five dollars a month; but no pension of a commissione officer shall be calculated at a higher rate than the half pay of lieutenant-colonel.

SEC. 7. *And be it further enacted*, That the pensions, or increase thereof, which may be allowed by this act, shall be paid in the same manner as pensions to invalids who have been heretofore placed on the pension list are now paid, and under such restrictions and regulations, in all respects, as are prescribed by law.

SEC. 8. *And be it further enacted*, That, from and after the passage of this act, no sale, transfer, or mortgage, of the whole, or any part, of the pension payable to any non-commissioned officer, musician, soldier, marine, or seaman, before the same becomes due, shall be valid. And every person claiming such pension, or any part thereof, under power of attorney or substitution, shall, before the same is paid, make oath or affirmation, before some magistrate, legally authorized to take the same; a copy of which, attested by said magistrate, shall be lodged with the person who pays said pension, that such power or substitution is not given by reason of any transfer of such pension, or part thereof. And any person who shall swear or affirm falsely in the premises, and be thereof convicted, shall suffer as for wilful and corrupt perjury.

SEC. 9. *And be it further enacted*, That all laws of the United States heretofore passed, so far as they authorize persons to be placed on the pension list of the United States, for, and in consequence of, disabilities derived from known wounds received in the revolutionary war, shall be, and they are hereby, repealed: *Provided*, That nothing in this repealing clause shall injure, or in any way affect, those persons already upon the pension list of the United States; and that the Secretary for the Department of War shall proceed upon the testimony which has been transmitted to him by any claimant, before the passage of this act, in the same manner as though this act had never passed.

SEC. 10. *And be it further enacted*, That this act, so far as it authorizes the admission of persons upon the pension list of the United States, shall remain in force for and during the space of six years from the passage thereof, and no longer: *Provided*, That this limitation shall not affect or impair the right of any invalid who may have completed his testimony, in the manner described by this act, before this limitation commences its operation, but which has not been transmitted to the Secretary for the Department of War.

[Approved, April 10, 1806.]

This act was revived and kept in force by the acts of April 25, 1812, May 15, 1820, February 4, 1822, and May 24, 1828, which latter continued it for six years from its date, and until the end of the next session of Congress, since which time no new statute has been passed on the subject. Those, however, who were already on the pension list, have been continued under the provisions of these acts.

No. 2.

INVALID PENSIONS FOR SERVICE BETWEEN THE REVOLUTIONARY WAR AND THE WAR OF 1812.

After the treaty of peace made with Great Britain, the Indians continued their hostilities on the frontiers for some time. A treaty was made with the Creeks on the 7th of August, 1790.

On the 30th September, 1790, General Harmer left Fort Washington to attack the Indian towns on the Scioto. This war with the North-western tribes continued until the 3d of August, 1795, when peace was made with them.

An act for regulating the Military Establishment of the United States.

SEC. 11. *And be it further enacted*, That if any commissioned officer, non-commissioned officer, private, or musician, aforesaid shall be wounded or disabled, while in the line of his duty in public service, he shall be placed on the list of the invalids of the United States, at such rate of pay and under such regulations as shall be directed by the President of the United States, for the time being: *Provided, always*, That the rate of compensation for such wound or disabilities shall never exceed, for the highest disability, half the monthly pay received by any commissioned officer at the time of being so wounded or disabled; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive only a sum in proportion to the highest disability. [Approved, April 30, 1790.]

An act for making further and more effectual provision for the protection of the frontiers of the United States.

SEC. 11. *And be it further enacted*, That all the commissioned and non-commissioned officers, privates, and musicians, of the said three regiments, shall take the same oaths, shall be governed by the same rules and regulations, and, in cases of disabilities, shall receive the same compensations as are described in the beforementioned act entitled "An act for regulating the military establishments of the United States." [Approved, March 5, 1792.]

An act for continuing and regulating the military establishment of the United States and for repealing sundry acts heretofore passed on that subject.

SEC. 13. *And be it further enacted*, That if any officer, non-commissioned officer, private, or musician, aforesaid, shall be wounded or disabled, while in the line of his duty, in public service, he shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as shall be directed by the President of the United States for the time being: *Provided, always*, That the rate of compensation to be allowed for such wounds or disabilities to a commissioned officer, shall never exceed, for the highest disability, half the monthly pay of such officer, at the time of his being so dis

abled or wounded; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability. [Approved, March 3, 1795.]

An act for the relief of certain officers and soldiers, who have been wounded or disabled in the actual service of the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every commissioned [and] non-commissioned officer, private, or musician, who has been wounded or disabled, while in the line of his duty, in actual service, called out by authority of any law of the United States, while he belonged to the militia; or any volunteer not belonging to the militia, who has been wounded or disabled, while in the line of his duty, in actual service as aforesaid, shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as shall be directed by the President of the United States for the time being: *Provided*, The rate of compensation for such wounds and disabilities shall never exceed, for the highest disabilities, half the monthly pay received by any commissioned officer, at the time of being so wounded or disabled; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month; and that all inferior disabilities shall entitle the person so disabled to receive only a sum in proportion to the highest disability: *And provided*, That these provisions shall not be construed to extend to any person wounded or disabled before the fourth of March, one thousand seven hundred and eighty-nine, nor to any person wounded or disabled since that time, who has made application for a pension, under any existing law of the United States, and has been denied, or admitted, on the pension list: *And provided*, That all applications herein shall be made within one year after the end of the present session of Congress. [Approved, March 23, 1796.]

An act to ascertain and fix the military establishment of the United States.

SEC. 19. *And be it further enacted*, That if any officer, non-commissioned officer, private, or musician, aforesaid, shall be wounded or disabled, while in the line of his duty, in public service, he shall be placed on the list of the invalids of the United States, at such rate of pay, and under such regulations, as shall be directed by the President of the United States for the time being: *Provided always*, That the rate of compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall never exceed, for the highest disability, half the monthly pay of such officer, at the time of his being so disabled or wounded; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month: *And provided also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability. [Approved, May 30, 1796.]

An act authorizing the President of the United States to raise provisional army.

SEC. 2. *And be it further enacted*, That the President be, and he is hereby, authorized to organize, with a suitable number of major-generals, and conformably to the military establishment of the United States, the said troops into corps of artillery, cavalry, and infantry, as the exigencies of the service may require, in the recess of the Senate, alone, to appoint the commissioned officers. The appointment of the field officers to be submitted to the advice and consent of the Senate at their next subsequent meeting. The commissioned and non-commissioned officers, musicians, and privates, raised in pursuance of this act, shall be subject to the rules and articles of war, and regulations for the government of the army, and be entitled to the same pay, clothing, rations, forage, and all other emoluments, bounty excepted; and, in case of wounds or disability, received in service, to the same compensation as the troops of the United States are by law entitled. [Approved, May 28, 1798.]

An act giving eventual authority to the President of the United States to augment the army.

SEC. 3. *And be it further enacted*, That the officers, non-commissioned officers, and privates, of the troops which may be organized and raised pursuant to this act, shall be entitled to the like pay, clothing, rations, forage, and other emoluments, and to the like compensation in case of disability by wounds, or otherwise, incurred in the service, as the officers, non-commissioned officers, and privates, of other troops of correspondent denominations, composing the army of the United States; and, with them, shall be subject to the rules and articles of war, and to all other regulations for the discipline and government of the army. *Provided*, That no officer, except captains and subalterns who may be employed in the recruiting service, shall be entitled to any pay or other emolument until he shall be called into actual service. [Approved, March 2, 1799.]

The two preceding acts were passed during the disturbance with France, which, however, was ended soon after the latter enactment.

An act fixing the military peace establishment of the United States.

SEC. 14. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, in the corps composing the peace establishment, shall be disabled by wounds or otherwise, while in the line of his duty, in public service, he shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as may be directed by the President of the United States, for the time being: *Provided always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed, for the highest rate of disability, half the monthly pay of such officer at the time of his being disabled or wounded; and that no officer shall receive more than the half pay of a lieutenant-colonel; and that the rate of compensation to non-

commissioned officers, musicians, and privates, shall not exceed five dollars per month : *And provided, also,* That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability. [Approved, March 16, 1802.]

An act to raise for a limited time an additional military force.

SEC. 5. *Be it further enacted,* That the officers, cadets, non-commissioned officers, musicians, artificers, and privates, raised pursuant to this act, shall be entitled to the like compensation, in case of disability by wounds, and otherwise, incurred in the service, as the officers, cadets, non-commissioned officers, musicians, artificers, and privates, in the present military establishment.

[Approved, April 12, 1808.]

An act concerning invalid pensioners.

SEC. 4. *And be it further enacted,* That any officer, non-commissioned officer, musician, or private, who has been wounded or disabled since the revolutionary war, while in the line of his duty, in the actual service of the United States, whether he belong to the military establishment or the militia, or any volunteer corps, called into service, under the authority of the United States, may be placed on the pension list of the United States, at such rate of compensation, and under such regulations, as are prescribed by the act entitled "An act to provide for persons who were disabled by known wounds received in the revolutionary war," passed April the tenth, one thousand eight hundred and six.

SEC. 5. *And be it further enacted,* That the pensioners, becoming such in virtue of this act, shall be paid in the same manner as invalid pensioners are paid who have heretofore been placed on the pension list of the United States, under such restrictions and regulations, in all respects, as are prescribed by the laws of the United States in such cases provided.

[Approved, April 25, 1808.]

An act authorizing the President of the United States to raise certain companies of rangers for the protection of the frontier of the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States, whenever he shall have satisfactory evidence of the actual or threatened invasion of any State or Territory of the United States, by any Indian tribe or tribes, be, and he is hereby, authorized to raise, either by the acceptance of volunteers or enlistment for one year, unless sooner discharged, as many companies as he may deem necessary, not exceeding six, who shall serve on foot, or be mounted, as the service in his opinion may require, shall act on the frontier as rangers, be armed, equipped, and organized, in such manner, and be under such regulations and restrictions, as the nature of the service, in his opinion, may make necessary.

SEC. 2. *And be it further enacted,* That each of the said com-

panies of rangers shall consist of one captain, one first, one second lieutenant, one ensign, four sergeants, four corporals, and sixty privates.

SEC. 3. *And be it further enacted*, That when the said rangers arm and equip themselves, and provide their own horses, they shall be allowed, each, one dollar per day, and without a horse, seventy-five cents per day, as full compensation for their services, rations, or forage, as the case may be. The commissioned officers shall receive the same pay and rations as officers of the same grade in the army of the United States.

SEC. 4. *And be it further enacted*, That the officers, non-commissioned officers, and privates, raised pursuant to this act, shall be entitled to the like compensation in case of disability, by wounds and otherwise, incurred in the service, as officers, non-commissioned officers, and privates, in the present military establishment, and with them shall be subject to the rules and articles of war, which have been established, or may hereafter by law be established; and the provisions of the act entitled "An act fixing the military peace establishment of the United States," so far as they may be applicable, shall be extended to all persons, matters, and things, within the intent and meaning of this act, in the same manner as if they were inserted at large in the same. This act shall take effect, and be in force, from and after the passage thereof, and continue in force for one year, and from thence to the end of the next session of Congress.

[Approved, January 2, 1812.]

An act to raise an additional military force.

SEC. 14. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, shall be disabled by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pension, and under such regulations, as are or may be directed by law: *Provided, always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed, for the highest rate of disability, half the monthly pay of such officer, at the time of his being disabled or wounded; and that no officer shall receive more than the half pay of a lieutenant colonel; and that the rate of compensation to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

[Approved, January 11, 1812.]

An act authorizing the President of the United States to accept and organize certain volunteer military corps.

SEC. 5. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, shall be disabled by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalid pensioners of the United States, at such rate of pension, and under such regulations, as are, or may be, directed by law: *Provided, always*, That the compensation to be

allowed for such wounds or disabilities to a commissioned officer shall not exceed, for the highest rate of disability, half the monthly pay of such officer, at the time of his being wounded or disabled; and that no officer shall receive more than the half pay of a lieutenant colonel: And that the rate of pension to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided, also,* That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

[Approved, February 6, 1812.]

An act in addition to the act entitled "An act to raise an additional military force," passed January 11, 1812.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he hereby is, empowered to cause to be enlisted, for the term of eighteen months, unless sooner discharged, such part of the light dragoons, artillery, and infantry, authorized by the act entitled "An act to raise an additional military force," as he may deem expedient: *Provided,* The whole number, so to be enlisted for eighteen months, shall not exceed fifteen thousand, anything in the said recited act to the contrary notwithstanding.

SEC. 2. *And be it further enacted,* That the non-commissioned officers, musicians, and privates, so to be enlisted, shall be entitled to the bounty of sixteen dollars, and the same pay, clothing, and rations, the same provisions for wounds or disabilities, and to all other allowances (the bounty in land excepted), provided by the said before recited act, for the non-commissioned officers, musicians, and privates, who may be raised under the same, and shall be held to perform the same duties, and be subject to the same rules and regulations.

[Approved, April 8, 1812.]

An act for the relief of the officers and soldiers who served in the late campaign, on the Wabash.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the officers, according to the rank assigned them by Governor Harrison, and which they held on the seventh day of November, one thousand eight hundred and eleven, the non-commissioned officers, and soldiers, of the volunteers and militia, and the legal representatives of those who were killed, or died of their wounds, composing the army that served in the late campaign on the Wabash against the hostile Indians, shall receive the same compensation which is allowed by law to the militia of the United States, when called into the actual service of the United States.

SEC. 3. *And be it further enacted,* That every officer, according to the rank which he held as aforesaid, non-commissioned officer, and private, of the volunteers and militia, who served in the said campaign, and who have been disabled by known wounds received in said service, shall be placed on the list of invalids of the United States,

at such rate of pension as shall be directed by the President of the United States, upon satisfactory proof of such wound and disability being produced to the Secretary of War, agreeably to such rule as he may prescribe: *Provided*, That the rate of compensation for such wounds and disabilities shall never, for the highest disability, exceed half the monthly pay of such officer, at the time of being so wounded or disabled, and that the rate of compensation to a non-commissioned officer and private shall never exceed five dollars per month; and all inferior disabilities shall entitle the person so disabled to receive a sum in proportion to the highest disability; but no pension of a commissioned officer shall be calculated at a higher rate than the half pay of a lieutenant-colonel.

[Approved, April 10, 1812.]

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No. 3.

## INVALID PENSIONS FROM THE WAR OF 1812 TO THE MEXICAN WAR.

An act in addition to the act entitled "An act to raise an additional military force, and for other purposes."

SEC. 10. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, shall be disabled, by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pension and under such regulations as are or may be directed by law: *Provided, always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed, for the highest rate of disability, half the monthly pay of such officer, at the time of his being disabled or wounded; and that no officer shall receive more than the half pay of a lieutenant-colonel; and that the rate of compensation to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

[Approved, January 29, 1813.]

An act to amend the "Act in addition to the act entitled 'An act to raise an additional military force, and for other purposes.'"

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That five of the regiments which were authorized to be raised by "An act in addition to the act entitled 'An act to raise an additional military force, and for other purposes,'" passed the twenty-ninth day of January, one thousand eight hundred and thirteen, may, at the discretion of the President of the United States, be enlisted for and during the war, unless sooner discharged, and be limited, as to service, to the defence of the seaboard of the United States, or of such part thereof as the President may elect and determine.

SEC. 2. *And be it further enacted*, That each man recruited under the authority of this act, be allowed the same bounty, in money and land, as is allowed by law to men enlisted for five years, or for the war; and that the officers, non-commissioned officers, musicians, and privates, shall receive the same pay, clothing, subsistence, and forage, be entitled to the same benefits, be subject to the same rules and regulations, and be placed, in every respect, on the same footing as the other regular troops of the United States.

[Approved, July 5, 1813.]

An act to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States.

SEC. 2. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, of the militia, or of any volunteer corps, shall be disabled by known wounds received in the actual service of the United States, while in the line of his duty, he shall, upon substantiating his claim, in the manner described by an act, entitled "An act to provide for persons who were disabled by known wounds received in the revolutionary war," passed the tenth day of April, one thousand eight hundred and six, be placed on the list of invalids of the United States, at such rate of pension, and under such regulations, as are provided by the said act, or as may hereafter be provided by law: *Provided, always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed, for the highest rate of disability, half the monthly pay of such officer, at the time of his being wounded or disabled, and that no officer shall receive more than the half pay of a lieutenant-colonel; and that the rate of compensation to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the persons so disabled to receive an allowance proportionate to the highest disability.

SEC. 3. *And be it further enacted*, That the provisions of this act shall be construed to have effect from and after the eighteenth day of June, one thousand eight hundred and twelve.

[Approved, August 2, 1813.]

An act authorizing the President of the United States to cause certain regiments therein mentioned to be enlisted for five years, or during the war.

SEC. 2. *And be it further enacted*, That each man enlisted under the authority of this act, shall be allowed the same bounty, in money and land, as is now by law allowed to men enlisted for five years or during the war; and that the officers, non-commissioned officers, musicians, and privates, shall receive the same pay, clothing, subsistence and forage, be entitled to the same benefits, be subject to the same rules and regulations, and be placed in every respect on the same footing, as the other regular troops of the United States.

[Approved, January 28, 1814.]

An act to authorize the President to receive into service certain volunteer corps.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the

President of the United States be, and he is hereby, authorized receive into the service of the United States such proportion of the volunteers, authorized by the act of sixth February, one thousand eight hundred and twelve, and the act supplementary thereto, of the sixth July, one thousand eight hundred and twelve, and accept under the authority of said acts, as, in his judgment, the public service may require: *Provided*, That the volunteers so received shall engage to serve for five years, or during the war, unless sooner discharged.

SEC. 2. *And be it further enacted*, That the volunteers which shall be taken into service under the authority of the preceding section shall be entitled to the same bounty, pay, rations, clothing, forage and emoluments of every kind, and to the same benefits and allowances, as the regular troops of the United States.

SEC. 3. *And be it further enacted*, That the officers of corps volunteers which shall be taken into service, shall rank, according to grade and the dates of their commissions or appointments, with other officers of the army.

[Approved, February 24, 1814.]

An act authorizing the President of the United States to cause certain regiments therein mentioned to be enlisted for five years, or during the war.

SEC. 2. *And be it further enacted*, That each man enlisted under the authority of this act, shall be allowed the same bounty, in money and land, as is now by law allowed to men enlisted for five years during the war; and that the officers, non-commissioned officers, musicians, and privates, shall receive the same pay, clothing, subsistence and forage, be entitled to the same benefits, be subject to the same rules and regulations, and be placed in every respect on the same footing, as the other regular troops of the United States.

[Approved, January 28, 1814.]

An act fixing the military peace establishment of the United States.

SEC. 7. *And be it further enacted*, That the several corps authorized by this act shall be subject to the rules and articles of war, recruited in the same manner, and with the same limitations; and that officers, non-commissioned officers, musicians, and privates, shall be entitled to the same provision for wounds and disabilities, the same provision for widows and children, and the same benefits and allowances in every respect, not inconsistent with the provisions of this act, as are authorized by the act of sixteenth March, one thousand eight hundred and two, entitled "An act fixing the military peace establishment of the United States," and the act of the twelfth April, one thousand eight hundred and eight, entitled "An act to raise, for a limited time, an additional military force;" and that the bounty to the recruit, and compensation to the recruiting officer, shall be the same as are allowed by the aforesaid act of the twelfth of April, one thousand eight hundred and eight.

[Approved, March 3, 1815.]

An act making further provision for military services during the late war, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, when any officer or private soldier of the militia, including rangers, sea fencibles, and volunteers, or any non-commissioned officer, musician, or private, enlisted for either of the terms of one year or eighteen months, or any commissioned officer of the regular army, shall have died while in the service of the United States, during the late war, or in returning to his place of residence, after being mustered out of service, or who shall have died at any time thereafter, in consequence of wounds received whilst in the service, and shall have left a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; and in case of death or intermarriage of such widow before the expiration of said five years, the half pay for the remainder of the time shall go to the child or children of said decedent: *Provided, always*, That the Secretary of War shall adopt such forms of evidence in applications under this act as the President of the United States may prescribe: *Provided, also*, *That the officers and private soldiers of the militia, as aforesaid, who have been disabled by wounds or otherwise, while in the service of the United States, in discharge of their duty during the late war, shall be placed on the list of pensioners in the same manner as the officers and soldiers of the regular army, under such forms of evidence as the President of the United States may prescribe: Provided, also*, That the provisions of this act shall not extend to any person embraced in the provision of the act, entitled "An act to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States," passed the second day of August, one thousand eight hundred and thirteen.

[Approved, April 16, 1816.]

An act to authorize the President to raise mounted volunteers for the defence of the frontier.

SEC. 4. *And be it further enacted*, That the officers, non-commissioned officers, and privates, raised pursuant to this act, shall be entitled to the like compensation, in case of disability by wounds or otherwise, incurred in the service, as has heretofore been allowed to officers, non-commissioned officers, and privates in the military establishment of the United States; and shall be subject to the rules and articles of war, and such regulations as have been or shall be established according to law for the government of the army of the United States, as far as the same may be applicable to the said rangers within the intent and meaning of this act, for the protection and defence of the north-western frontier of the United States.

[Approved, June 15, 1832.]

An act for the more perfect defence of the frontiers.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in lieu of the battalion of mounted rangers authorized by the act of the fifteenth of June, one thousand eight hundred and thirty-two, there be established a regiment of dragoons, to be composed and organized as follows, &c. \* \* \* \*

SEC. 3. *And be it further enacted,* That the said regiment of dragoons shall be liable to serve on horse or foot, as the President may direct; shall be subject to the rules and articles of war, be recruited in the same manner, and with the same limitations; that the officers, non-commissioned officers, musicians, farriers, and privates, shall be entitled to the same provisions for wounds and disabilities, the same provisions for widows and children, and the same allowances and benefits in every respect, as are allowed the other troops constituting the present military peace establishment.

SEC. 4. *And be it further enacted,* That the President of the United States be authorized to carry into effect this act, as soon as he may deem it expedient, and to discharge the present battalion of mounted rangers, on their being relieved by the said regiment of dragoons.

[Approved, March 2, 1833.]

An act to provide for the payment of volunteers and militia corps in the service of the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the officers, non-commissioned officers, musicians, artificers, and privates, of volunteer and militia corps, who have been in the service of the United States, at any time since the first of November, in the year of our Lord one thousand eight hundred and thirty-five, or may hereafter be in the service of the United States, shall be entitled to, and receive, the same monthly pay, rations, clothing, or money in lieu thereof, and forage, and be furnished with the same camp equipage, including knapsacks, as are, or may be, provided by law for the officers, musicians, artificers, and privates, of the infantry of the army of the United States.

SEC. 4. *And be it further enacted,* That the volunteers or militia who have been, or who may be, received into the service of the United States, to suppress Indian depredations in Florida, shall be entitled to all the benefits which are conferred on persons wounded or otherwise disabled in the service of the United States.

SEC. 6. *And be it further enacted,* That the volunteers and militia, mentioned in the foregoing provisions of this act, called into service before its passage, and who are directed to be paid, shall embrace those only ordered into service by the commanding general, or Governors of States, and of the Territory of Florida, under authority from the War Department for repressing the hostilities of the Florida Indians.

[Approved, March 19, 1836.]

An act authorizing the President of the United States to accept the service of volunteers, and to raise an additional regiment of dragoons or mounted riflemen.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he hereby is, authorized to accept volunteers who may offer their services either as infantry or cavalry, not exceeding ten thousand men, to serve six or twelve months after they shall have arrived at the place of rendezvous, unless sooner discharged; and the said volunteers shall furnish their own clothes, and, if cavalry, their own horses, and when mustered into service shall be armed and equipped at the expense of the United States.

SEC. 2. *And be it further enacted,* That the said volunteers shall be liable to be called upon to do military duty only in cases of Indian hostilities, or to repel invasions, whenever the President shall judge proper, &c., &c. \* \* \* \*

SEC. 5. *And be it further enacted,* That the volunteers who may be received into the service of the United States, by virtue of the provisions of this act, shall be entitled to all the benefits which may be conferred on persons wounded in the service of the United States.

[Approved, May 23, 1836.]

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#### No. 4.

### INVALID PENSIONS FROM THE COMMENCEMENT OF THE MEXICAN WAR TO THE PRESENT TIME.

An act providing for the prosecution of the existing war between the United States and the Republic of Mexico.

Whereas, By the act of the Republic of Mexico, a state of war exists between that government and the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, for the purpose of enabling the government of the United States to prosecute said war to a speedy and successful termination, the President be, and he is hereby, authorized to employ the militia, naval, and military forces of the United States, and to call for and accept the services of any number of volunteers, not exceeding fifty thousand, who may offer their services, either as cavalry, artillery, infantry, or riflemen, to serve twelve months after they shall have arrived at the place of rendezvous, or to the end of the war, unless sooner discharged, according to the time for which they shall have been mustered into service; and that the sum of ten millions of dollars, out of any money in the treasury, or to come into the treasury, not otherwise appropriated, he, and the same is hereby, appropriated for the purpose of carrying the provisions of this act into effect. \* \* \*



SEC. 7. *And be it further enacted*, That the volunteers who may be received into the service of the United States by virtue of the provisions of this act, and who shall be wounded or otherwise disabled in the service, shall be entitled to all the benefit which may be conferred on persons wounded in the service of the United States.

[Approved, May 13, 1846.]

An act to extend the provisions of existing pension laws to enlisted men of the ordnance corps of the United States army.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the acts of Congress granting pensions to soldiers disabled by wounds or otherwise, while in the line of their duty in public service, shall be construed to apply to the enlisted men of the ordnance department who have been or may be disabled, in the same manner as to non-commissioned officers, artificers, musicians, and privates of other corps of the army, subject to the limitation that in no such case shall the pension exceed the rate of eight dollars per month.

SEC. 2. *And be it further enacted*, That those enlisted men of the ordnance department who have served or may serve in Mexico, during the war with that country, shall be entitled to, and shall receive, the same bounty in land as is or may be allowed by law to other regular troops in the service of the United States, and under like limitations and restrictions.

[Approved, July 10, 1848.]

## No. 5.

### PENSIONS TO CHEROKEE WARRIORS.

An act to provide for the allowance of invalid pensions to certain Cherokee warriors, under the provisions of the fourteenth article of the treaty of eighteen hundred and thirty-five.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of War be, and he hereby is, required to place on the pension roll such warriors of the Cherokee nation as were engaged on the side of the United States in the late war with Great Britain and the Southern Indians, and who were wounded in such service, at the same rates of pension as are allowed by law to the officers and soldiers of the regular army of the United States, under such rules and regulations as to the proof of disability as the Secretary of War shall prescribe; which pensions shall commence from the period of disability.

[Approved, April 14, 1842.]

## No. 6.

### PENSIONS TO SEA FENCIBLES.

An act to authorize the raising of a corps of sea fencibles.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That

the President of the United States be, and he is hereby, authorized to raise, for such term as he may think proper, not exceeding one year, as many companies of sea fencibles as he may deem necessary, not exceeding ten, who may be employed as well on land as on water, for the defence of the ports and harbors of the United States.

SEC. 2. *And be it further enacted*, That each of the said companies of sea fencibles shall consist of one captain, one first, one second, and one third lieutenant, one boatswain, six gunners, six quarter-gunners, and ninety men.

SEC. 3. *And be it further enacted*, That the commissioned officers shall receive the same pay and rations as officers of the same grade in the army of the United States; that the boatswain, gunners, quarter-gunners, and men, shall receive the same pay and rations as warrant officers of the same grade and able seamen receive in the service of the United States.

SEC. 4. *And be it further enacted*, That the officers, warrant officers, boatswains, and men, raised pursuant to this act, shall be entitled to the like compensation in case of disability incurred by wounds, or otherwise, in the service of the United States, as officers, warrant officers, and seamen, in the present naval establishment, and shall be subject to the rules and articles which have been, or may hereafter be, established by law, for the government of the army of the United States.

SEC. 5. *And be it further enacted*, That this act shall be and continue in force during the present war between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland, and the dependencies thereof.

SEC. 6. *And be it further enacted*, That, in the recess of the Senate, the President of the United States is hereby authorized to appoint all the officers proper to be appointed under this act; which appointments shall be submitted to the Senate at their next session, for their advice and consent.

SEC. 7. *And be it further enacted*, That the sum of two hundred thousand dollars be, and the same is hereby, appropriated to carry this act into effect, to be paid out of any money in the treasury, not otherwise appropriated.

[Approved, July 26, 1813.]

## PRINCIPLES AND DECISIONS RELATING TO ARMY INVALID PENSIONS.

### No 1.

#### *Character of the injury which entitles.*

Under the first clause of the 14th section of the act of March 16, 1802, the words, "or otherwise," import not only a disability brought on by the direct and apparent agency of accidents or inflictions from the hand of God or man, happening to a party in the immediate and obvious line of his duty, such as a sun-stroke, &c.; but if it be derivative, and plainly, though remotely, the incident and result of the military profession, it will entitle him to a pension. But if the loss of health proceeded from imprudence; much more if from vicious

habits; or if his constitution were impaired when he entered the service, he should be excluded from this charity.

[Opinion of Attorney-General, April 6, 1815.]

Every officer in full commission, and not on furlough, must be considered as in the line of his duty, although at the moment no particular and active duty may be devolved on him. Perhaps the voluntary absence of an officer from his post, too long continued, might form an exception to this rule. [Ib.]

Where the disability is incurred while the party is absent from his camp or station, on business connected with the public service, it entitles him to a pension; but he would not be entitled if he was absent attending to his own private affairs.

[Opinion of Attorney-General, December 20, 1833.]

A recruit disabled after he was enlisted, but before he was mustered into service and had joined his regiment, is not entitled to pension.

[Secretary of War, October 4, 1821.]

Pensions are allowed only for injuries received while the applicant was actually employed in the duties peculiar to him as a soldier. If he was equally liable to the same injury in private life, or if it resulted from his own fault, he is not entitled.

[Secretary of War, July 15, 1824.]

A soldier is always in the line of his duty when he is not under arrest, in confinement, on furlough, or absent without leave.

[Secretary of War, April 10, 1849.]

A soldier discharged on account of a disease under which he was laboring when he enlisted, is not entitled to a pension.

[Secretary of the Interior, June 2, 1849.]

## No. 2.

### *Rate of pension.*

An act to increase the pensions of invalids in certain cases; for the relief of invalids of the militia; and for the appointment of pension agents in those States where there is no commissioner of loans.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That all persons of the rank hereinafter named, who are now on the military pension roll of the United States, shall, from and after the passage of this act, be entitled to, and receive, for disabilities of the highest degree, the following sums, in lieu of those to which they are now entitled, to wit: a first lieutenant, seventeen dollars; a second lieutenant, fifteen dollars; a third lieutenant, fourteen dollars; an ensign, thirteen dollars; and a non-commissioned officer, musician, or private, eight dollars per month: and for disabilities of a degree less than the highest, a sum proportionably less.

SEC. 2. *And be it further enacted,* That all persons of the aforesaid ranks, who may hereafter be placed on the military pension roll of the United States, shall, according to their ranks and degrees of disabilities, be placed on at the aforesaid rates of pensions, in lieu of

those heretofore established: *Provided*, That nothing herein contained shall be construed to lessen the pension of any person who, by special provision, is entitled to a higher pension than is herein provided. [Approved, April 24, 1816.]

The provisions of the several pension acts, restricting the highest rate of pension to a sum not exceeding the half pay of a lieutenant-colonel, still apply to all officers not enumerated in the above act.

### No. 3.

#### *Militia pensions.*

SEC. 3. *And be it further enacted*, That all laws and regulations, relating to the admission of the officers and soldiers of the regular army to be placed on the pension roll of the United States, shall, and they are hereby declared to, relate equally to the officers and soldiers of the militia, whilst in the service of the United States.

This is a section of the foregoing act.

The militia of the several States are allowed pensions only under the act of April 24, 1816. This act does not embrace the armed police of a State. [Secretary of the Interior, case of Josiah Harding.]

### No. 4.

#### *Cadets entitled.*

SIR: I avail myself of the earliest hour at which prior engagements would permit it, to give you my opinion on the question, "Whether cadets, who are wounded in the line of their duty, are entitled to pensions?"

1. By the 1st section of the act of the 3d of March, 1815, "fixing the military peace establishment of the United States," *the corps of engineers* was expressly authorized to be retained; and, by the 7th section of the same act, it was provided that the several corps authorized should be entitled to the same provision for wounds and disabilities, &c., as was authorized by the act of the 16th of March, 1802, entitled "An act fixing the military peace establishment of the United States."

By the letter on which your question is endorsed, it appears that the inquiry relates to the cadets at West Point. If these cadets, then, constitute a part of the corps of engineers retained on the peace establishment by the act just cited, they are, by its express enactment, entitled to the same provision for wounds and disabilities, as was authorized by the act of the 16th of March, 1802. Do those cadets constitute a part of that corps?

2. By the 26th section of the act of the 16th of March, 1802, just referred to, a separate and distinct corps of engineers was, for the first time, authorized to be raised; and it was to consist, among others, of ten cadets.

3. By the next section of the same act, it was provided that the corps of engineers, thus organized, should constitute the military academy at West Point. Thus, in its origin, these ten cadets did constitute a part of the corps of engineers. By the 3rd section of

the act of the 29th of April, 1812, "making provision for the corps of engineers," it was enacted that the cadets theretofore appointed in the service of the United States, as well as those who might in future be appointed, as thereafter directed, might, at the pleasure of the President, be attached to the military academy at West Point, and be subject to the established regulations thereof. By the same section it was provided that, in order to qualify them to be thus attached, they should, among other things, have engaged *to serve for five years*, unless sooner discharged; and that they should be entitled to the pay and emoluments allowed by law to cadets in the corps of engineers.

Thus (contrary, I confess, to my impression, on the first presentation of the question), I find myself brought to the conclusion that the cadets attached to the military academy at West Point are entitled to the benefits of this provision for wounds and disabilities received in the line of their duty. [Opinion of Attorney-General, April 8, 1820.]

## No. 5.

*Line rank governs the pension.*

Under the 14th section of the act of February 11, 1812, an aide-de-camp can receive pension only according to his rank in the line. [Opinion of Attorney-General, December 5, 1820.]

Brevet rank does not regulate the pension of an officer, but his actual rank in the line. [Secretary of the Interior, case of Major Reynolds.]

## No. 6.

*Commencement of the pension.*

Invalid pensions in all cases must commence from the time of completing the proof; and that cannot be regarded as complete while anything of substance or of form is wanting.

[Opinion of Attorney-General, July 2 and 19, 1822.]

The testimony is complete when it is closed before the judicial officers before whom it is taken.

[Opinion of Attorney-General, March 31, 1836.]

The evidence in no pension case can be considered as complete until it is duly authenticated. [Rule, April 18, 1829.]

A soldier wounded in the line of his duty in April, 1830, applied for an invalid pension in June, 1830, but did not complete his proof till 1843; he was allowed a pension commencing in April, 1830, the date of the injury.

[Secretary of War, case of Conrad France, February, 1843.]

An act to revive and continue in force an act entitled "An act to provide for persons disabled by known wounds received in the revolutionary war."

SEC. 2. *And be it further enacted*, That the right any person now has, or hereafter may acquire, to receive a pension in virtue of any law of the United States, shall be construed to commence at the time of completing his testimony pursuant to the act hereby revived and continued in force.

When an invalid pensioner is obliged to permit the limb, on account

of whose injury he is pensioned, to be amputated, whereby he becomes entitled to an increased pension, that increase shall take effect from the date of the amputation, and not from the time he finishes the proof of such amputation. [Secretary of War, August 28, 1845.]

## No. 7.

### *What bars a pension.*

On the 18th April, 1829, the President ordered that no one, while receiving pay as an army officer, should be placed on the invalid pension roll.

General McNeil's application for a pension is made under the act of July 11, 1812.

This law directs that if any officer, non-commissioned officer, &c., shall be disabled while in the line of his duty, "*he shall be placed on the list of invalids of the United States, at such rate of pension and under such regulations as are or may be directed by law ;*" and then proceeds to limit the pension which may be allowed to the party. It does not fix the amount to which he shall be entitled, but declares that it shall not exceed certain amounts mentioned in the law.

As this act of Congress gives the party a right to a pension "at such rate and under such regulations as are or may be directed by law," and does not prescribe the manner in which the rate is to be fixed, nor the particular regulation under which he shall be entitled to be placed on the roll of pensions, we must look for some other act of Congress to guide us in this respect. And the only act of Congress then in force, to which this law can be supposed to refer, is the act of March 16, 1802. It is very clear that the act of 1812 cannot be construed to refer to the law of April 25, 1808, which placed invalids who had then been disabled, and who had received their wounds after the revolutionary war, on the same footing with the revolutionary pensioners. And I understand the uniform construction given to the act of 1812 has been, that it referred to the provisions of the act of 1802, to ascertain the rate of pensions, and the regulations by which the party was to become entitled to it. I think this construction is the true one ; and as no subsequent law has provided different regulations, or a different mode of fixing the amount of the pension, the provisions of the act of 1802 must, in these particulars, govern in all cases which arise under the act of 1812.

The act of 1802 directs that the party shall be placed on the list of invalids "*at such rate of pay and under such regulations as may be directed by the President of the United States for the time being.*" This law vests in the President the power to prescribe the "regulations" upon which a party may be placed on the pension lists, as well as the rate of pay to be allowed him, provided the amount does not exceed the rates limited by the act of Congress. It is to the regulations and rate of pay thus to be prescribed by the President, that the act of 1812 refers as being then directed by law ; and, consequently, it rests with the President to prescribe the regulations under which

a person is to be admitted as a pensioner, and also the rate of pay in all cases which arise under the act of 1812, as well as in those under the act of 1802.

As the President may prescribe the "regulations" under which a party shall be placed on the pension list, no one is legally entitled to be placed there in opposition to any regulation which he may think proper to make on the subject. The order of April 18, 1829, was an exercise of the power thus vested in the President; and since that regulation was made, and while it remains in force, no one who is in the receipt of pay or emolument as an officer of the army can be placed on the pension list.

The case of General McNeil, however, is not embraced in this order. But it does not follow that he has an absolute right to be placed on the pension roll; for it still remains with the President to decide whether he will apply the same regulation to all civil officers, or to any of them, or to what description. He may apply it, if he thinks proper, to civil officers receiving a certain amount of income from their offices, and exempt from its operation those whose allowances are less. And where his regulations do not exclude the party from the roll, he may fix the rate of pay as low as he thinks proper, taking care not to exceed the limits fixed by the act of Congress.

The result of the principles above stated, when applied to the case of General McNeil, is this: He has no absolute legal right to be placed on the pension list. It rests with the President to prescribe the regulations on this subject, which shall be applied to persons holding civil offices. If these regulations shall exclude General McNeil, he cannot be placed on the pension list. If they do not exclude him, or if the President should see fit to make any regulations in relation to persons holding civil offices of profit, then General McNeil will be entitled to be placed on the pension roll. But, in that event, it will still be for the President to determine upon the rate of pay to be allowed to him as a pensioner.

[Opinion of Attorney-General, May 31, 1832.]

The above decision\* excludes from the benefits of the Invalid pension laws all who hold a civil appointment.

[Secretary of War, case of Thomas Randall, Florida, October 19, 1839.]

The decision of the Attorney-General in the case of General McNeil merely declares that the President *may* exclude from the benefits of the Invalid pension laws all who hold a civil employment; but as he has never exercised this discretion, General McNeil has a clear right to their enjoyment, and is admitted.

[Secretary of War, June 11, 1841.]

An act making appropriations for the payment of revolutionary and other pensions, for the fiscal year ending 30th June, 1845.

*And provided, also,* That no person in the army, navy, or marine corps, shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability

for which the pension was granted be such as to have occasioned his employment in a lower grade, or in some civil branch of the service.

[Approved, April 30, 1844.]

### No. 8.

*A law is not impliedly repealed by another on the same subject, not inconsistent with itself.*

In answer to your inquiry of the 18th instant, I have the honor to state, as my opinion, that the act of March 2, 1821, to reduce and fix the military peace establishment of the United States, has not repealed or changed in any manner the claims for pensions given by the analogous act of 1815 and the acts to which it refers. There is no positive repeal of these provisions in the act of 1821; and a virtual or implicative repeal is only permitted where there is some repugnance between the last act and the former. None such exists in this case. If, therefore, the words of the eleventh section of the act of 1821 were not broad enough to continue the claim to pensions, I should consider them as supported by the antecedent unrepealed laws: being satisfied that Congress had no intention, by the act of 1821, to alter the existing military system, farther than to reduce the establishment, and to make the positive changes which they have made by the act of 1821. I am of the opinion, therefore, that the eleventh section of the act of 1821 must be liberally construed, as recognizing all the objects more especially provided for by the seventh section of the act of 1815, and, among these objects, the claim to pensions.

[Opinion of Attorney-General, November 17, 1828.]

The act of March 2, 1821, continues to officers and soldiers the same rank, pay, and emoluments provided by existing laws, but as it has no express pension clause, it has not been inserted.

The act of March 2, 1821, "to reduce and fix the peace establishment," does not repeal or vary the pre-existing laws on the subject of pensions, and the same provisions for wounds and disabilities made by the act of March 3, 1815, are in force under it.

[Secretary of War, November 18, 1826.]

### No. 9.

*Erroneous allowance by one Secretary not to be corrected by another.*

You state, substantially, that Thomas Fitzgerald having been wounded after the passage of the act of January 29, 1813, which authorizes the allowance of pensions graduated according to the rate of disability, and having exhibited to the then Secretary of War a surgeon's certificate of his total disability, was, nevertheless, placed on the pension list in 1815, at half the allowance granted for a total disability; that the full allowance for such disability was accorded



to him in 1821; and that he now claims from you the difference between the allowance for a total and partial disability from 1815 to 1821.

In answer to your inquiries, I have to state that, not having before me the evidence on which the Secretary of War acted in placing Thomas Fitzgerald on the pension list originally, I cannot form an opinion whether he was or was not then entitled to the allowance provided for a total disability; but I deem it the less important to make this inquiry, being of opinion that the error committed by your predecessor (if any error was in fact committed) can only be remedied by an application to Congress.

[Opinion of Attorney-General, December 17, 1829.]

I confess myself unable to extract any principle from the above decision, unless it rested upon the lapse of time since the erroneous allowance.

#### No. 10.

*The repeal of a law under which a pensioner was dropped, does not restore him to the rolls.*

The act of July 14, 1832, does nothing more than repeal the law of March 3, 1819, and thereby dispenses with the necessity of ad-ducing the proof of continued disability. It does not restore to the pension roll any one who had been dropped from it, but authorizes the payment to those who were then on the list of pensioners. The latter would have been entitled to receive their pensions, upon ad-ducing proof of disability only; without offering the other evidence, which was necessary upon the original application for the pension. And the repealing law merely dispenses with the proof of disability, and allows those who were at that time recognized as pensioners to receive payment without it; but it does not restore pensions to persons who, by former omission of the required proof, had lost the character of pensioners, and were no longer acknowledged to be such by the competent authority.

The act of July 14, 1832, repeals the act of March 3, 1819, which required that in all cases of applications by invalid pensioners for the pensions already granted them, they should, at the end of every two years, produce the affidavits of two surgeons as to their continued disability, and its degree.

#### No. 11.

##### *Evidence.*

If the rolls of the service in which the applicant's name is found, do not show the injury, the absence of such remark must be satisfactorily accounted for before the pension can be granted.

[Secretary of War, January 10, 1825.]

No surgeon's affidavit or certificate shall be deemed evidence suffi-

cient to justify the allowance of a pension, unless it shall have been received at the Department within one month from the date thereof.  
[Rule, April 18, 1829.]

The certificate of Members of Congress as to the character of a physician or surgeon, may be received.

[Secretary of War, November 29, 1833.]

An United States' Judge may certify the same.

[Rule, December 4, 1838.]

## No. 12.

### *Minors.*

One disabled in the service does not lose his right to a pension, although he may subsequently have been discharged from it because of his being a minor.

[Secretary of War, February 10, 1836.]

## No. 13.

### *Arrears of pension a vested right.*

The Invalid pension acts, promising a pension for future service, amount to a contract on the part of the Government, and vest an absolute right in the party whenever the disability shall occur. If, therefore, he has completed his proof, and thus become entitled, but dies before the certificate issues, his representatives may claim the arrears.

[Secretary of the Interior, case of Abigail McKindley.]

## No. 14.

### *Special Act.*

An invalid pensioner was dropped from the pension roll, but restored by a special act of Congress; this act simply amounted to a legislative declaration that he was entitled; and whenever any subsequent general law increases the pension to which persons of his rank were entitled, his pension is thereby increased.

[Secretary of War, case of Peter W. Short.]

## FORM OF DECLARATION AND REGULATIONS.

The form of declaration, proofs, &c., are the same for all claimants of invalid pension, no matter at what period they may have been wounded.

## FORM OF AN APPLICATION FOR AN INVALID PENSION.

State of ..... }  
County of ..... } *act.*

On this ..... day of ....., A. D. one thousand eight hundred and ....., personally appeared before me, a Justice of the Peace, (or other officer authorized to administer oaths for general purposes,) within and for the County and State aforesaid, .....

aged ..... years, a resident of ..... in the State of ....., who, being duly sworn according to law, declares that he is the identical ....., who enlisted in the service of the United States as a ....., in the company commanded by ....., in the war with Great Britain, declared by the United States on the 18th of June, 1812, (*if any other war, describe what war,*) and was honorably discharged on the ..... day of ....., in the year .....; that, while in the service, and in the line of his duty, he received the following wound, (*or other disability, as the case may be,*) [*here give a particular and minute account of the wound or other injury, and state how, when, and where it occurred: where the applicant has resided since leaving the service, and what has been his occupation.*]

(Signature of the claimant.)

In support of the averments of the applicant in the above declaration, and in accordance with the rules and regulations, the following order should be observed in presenting the testimony: —

1. In all applications for pensions, renewals of pensions, and for bounty land, the signature of the applicant must be attested, and his or her personal identity established by the affidavits of two witnesses, whose residences must be given, and whose credibility must be sustained by the certificate of the court or magistrate before whom the application is verified.

#### PROOF OF IDENTITY.

State of ..... {  
County of ..... }

Personally appeared ..... and ....., residents of the (county, city, or town,) persons whom I certify to be respectable, and entitled to credit, and who, being by me duly sworn, say that they were present, and saw ..... sign his name (or make his mark) to the foregoing declaration: and they further swear, that they have every reason to believe, from the appearance of the applicant and their acquaintance with him, that he is the identical person he represents himself to be, and that they (deponents,) do reside in the (county, city, or town) aforesaid.

(Signatures of witnesses.)

Sworn to, and subscribed before me, this ..... day of .....

(Signature of justice or other officer.)

2. The soldier's discharge and the surgeon's certificate on which it was founded, in cases where he was discharged for disability, must be produced, or a satisfactory reason assigned for their non-production.

3. The following evidence will be required in all militia cases, and cases of the regular army, where the discharge and surgeon's certificate have been lost or destroyed, or where none have been given sufficient to authorize the Secretary of War to grant pensions, viz.:

In cases where the regular discharge and the surgeon's certificate for disability cannot be had, the applicant for a pension, whether he has been a soldier\* of the regular army, or a militia man, in the service of the United States, during the late war with Great Britain or since that period, must produce the sworn certificate of his Captain, or other officer under whom he served, stating distinctly the time and place of his having been wounded, or otherwise dis-

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\* These rules of evidence are applicable to claimants of every grade.

abled; and that the same wounds or disabilities arose while in the service of the United States, and in the line of his duty; with the affidavit of one or more surgeons\* or physicians, whether of the army or citizens, accurately describing the wound, and stating the degree of disability to which the soldier may be entitled under it. These documents to be sworn to before a judge of the United States court, or some judge or justice of the peace; and if a State judge or justice of the peace, then under the seal of the clerk of the county in which such judge or justice may reside; and the name of the paymaster who last paid the soldier, as belonging to the service of the United States, to be in every instance furnished by the applicant, in order to a due examination of the muster rolls.

4. The rule which requires the testimony of a commissioned officer to show the origin and nature of the corporal disability of an applicant for a pension, may be dispensed with in a case where it is clearly shown that such evidence cannot be obtained, and where other satisfactory proof of disability can be obtained. In such a case, the following rules of evidence will be adhered to:—

*First.* The applicant must make a declaration setting forth all the material facts, and the surgeons must testify as the rule of December 23, 1817, directs.

*Second.* He must prove, by persons of known respectability, that the officers mentioned by the claimant in his deposition, are dead, or removed to such a distance as to render it impracticable to obtain their affidavits. The person or persons who may give such evidence must state particularly all the knowledge they may possess in relation to the death or removal of such officers.

*Third.* In such a case as that mentioned in the second rule, the applicant must produce the testimony of least two credible witnesses, whose good character must be vouched for by some one known to this Department. The witnesses must give a minute narrative of all the facts in relation to this matter, and it must be shown conclusively, by their testimony, that the disability of the claimant is to be ascribed solely to injury sustained while the claimant was in discharge of military duty in the service of the United States. The witnesses must show how they acquired a knowledge of the facts as set forth, and state in what capacity or grade they served.

The affidavits must be authenticated in the same manner prescribed by the preceding rule.

5. The surgeons must give, in their certificate, a particular description of the wound, injury, or disease, and specify how, and in what manner, his present condition and disability are connected therewith. The degree of disability must also be stated.

#### SURGEONS' AFFIDAVIT.

It is hereby certified, That ..... a ..... in the company of ..... in the ..... regiment of the United States ....., is rendered incapable

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\* The applicant, if within thirty miles of an army surgeon, must obtain his certificate.

of performing the duty of a soldier, by reason of wounds or other injuries inflicted while he was actually in the service aforesaid, and in the line of his duty, viz. :

By satisfactory evidence and accurate examination, it appears that on the ..... day of ....., in the year ....., being engaged ....., at or near a place called ....., in the district or territory of ....., he received ....., in his \* ....., and he is thereby not only incapacitated for military duty, but, in the opinion of the undersigned, is † ..... disabled from obtaining his subsistence from manual labor.

(Signatures of the surgeons.)

6. The habits of the applicant, and his occupation, since he left the service, must be shown by at least two credible witnesses.

7. All evidence must be verified by oath, before a judge of the United States court, or some judge or justice of the peace, or other officer of a State having authority to administer oaths for general purposes; and, if verified before an officer of any State, his official character must be duly authenticated; and such officer must, in all cases, certify that he is not interested in the prosecution of the claim.

8. No certificate of facts found by any court will be deemed sufficient in any case, unless the facts are certified to be within the personal knowledge of the judge who shall sign the certificate; or the names and places of residence of the witnesses by whom the facts are established be given; or the affidavits, properly authenticated, be appended to the certificate.

The application for pension by a Cherokee warrior, under the act of April 14, 1842, will conform in all respects to the foregoing regulations, except in the particulars in which they are varied by the following regulations: —

In substantiating claims under this law, the following evidence will be required:

The applicant must make a declaration, under oath, before some officer of the United States, or of the Cherokee nation, duly qualified to administer oaths, stating how, when, and where he was wounded, and where he at present resides. He must also produce the testimony of at least two persons of known respectability, stating their knowledge of the claimant, giving his name, residence, and age,

\* Here give a particular description of the wound, injury, or disease, and specify in what manner it has affected the applicant so as to produce disability in the degree stated.

† N. B. — The blank in the last line but one is to be filled up with the proportioned "degree" of disability—for example: "three-fourths," "one half," "one-third," &c., or "totally," as the case may be.

☞ The magistrate who may administer the oath to the surgeons, must certify that they are respectable in their profession, and the official character and signature of the magistrate must be certified by the proper officer, under his seal of office.

☞ *Mode of Authenticating Papers.* — In every instance where the certificate of the certifying officer who authenticates the papers is not written on the same sheet of paper which contains the affidavit or other paper authenticated, the certificate must be attached thereto by a piece of tape or small ribbon, the ends of which must pass under the seal of office of the certifying officer, so as to prevent any paper from being improperly attached to the certificate.

according to the best of their knowledge and belief; the reputation he has borne in the neighborhood where he resides; and they must be particular in stating the fact whether, during the whole time they have been acquainted with him, he has been considered as one of the Cherokee warriors who was wounded while in the United States' service during the late war with Great Britain. The affidavits must be duly authenticated.

The applicant, on obtaining such proof, must present himself to some officer of the medical staff of the army, who will carefully examine him, and give such a certificate respecting his disability as the facts will justify him in giving. The applicant's wound must be particularly described, and the degree of disability arising from the wound must be clearly stated. The examining surgeon is also required to be particular in stating any fact within his knowledge that may have the tendency to throw light on the claim, whether or not it may relate to the claimant's disability.

No claim will be allowed unless the claimant's name appears on the muster rolls.

The pensions which may be granted will be paid only to the pensioner in person, by or under the direction of some officer of the United States, upon satisfactory evidence of the identity of the applicant. In no case will the powers of attorney be recognized.

# PART III.

## PENSIONS FOR ARMY AND MILITIA WIDOWS AND ORPHANS.

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No. I.

### LAWS EXECUTED AT THE OFFICE OF THE THIRD AUDITOR OF THE TREASURY DEPARTMENT.

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No. 1.

FROM 1794 TO THE WAR OF 1812.

An act in addition to the "Act for making further and more effectual provision for the protection of the frontiers of the United States."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any commissioned officer in the troops of the United States shall, while in the service of the United States, die, by reason of wounds received in actual service of the United States, and shall leave a widow, or if no widow, shall leave a child or children, under age, [of 16 years,] such widow, or if no widow, such child or children, shall be entitled to, and receive, the half of the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years: And in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay, for the remainder of the term, shall go to the child or children of such deceased officer, while under the age of sixteen years; and, in like manner, the allowance to the child or children of such deceased, where there is no widow, shall be paid no longer than while there is a child or children under the age aforesaid. *Provided,* That no greater sum shall be allowed, in any case, to the widow, or to the child or children, of any officer, than the full pay of a lieutenant-colonel.

[Approved, June 7, 1794.]

An act to provide for the widows and orphans of certain deceased officers.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions for widows and orphans of commissioned officers of troops of the United States, contained in the first section of the law passed on the seventh day of June, one thousand seven hundred and ninety-four, entitled "An act in addition to the act making further and more effectual provision for the protection of the frontiers of the United States," be, and the same are hereby, extended to the widows and orphan children of the commissioned officers of the troops of the United States, and of the militia, who have died by reason of wounds received since the fourth day of March, one thousand seven hundred and eighty-nine, in the actual service of the United States: *Provided*, application shall be made within two years after the end of the present session of Congress. [Approved, March 14, 1798.]

An act fixing the military peace establishment of the United States.

SEC. 15. *And be it further enacted,* That if any commissioned officer in the military peace establishment of the United States, shall, while in the service of the United States, die, by reason of any wound received in actual service of the United States, and leave a widow, or, if no widow, a child or children under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to and receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years. But in the case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay, for the remainder of the time, shall go to the child or children of such deceased officer: *Provided always*, That such half pay shall cease on the decease of such child or children. [Approved, March 16, 1802.]

An act to raise for a limited time an additional military force.

*Part of* SEC. 5.—And that the provisions of the act, entitled "An act fixing the military peace establishment of the United States," relative to the widow, child, or children, of any commissioned officer who shall die, while in the service of the United States, by reason of any wound received in actual service of the United States, shall be in force, and applied to all persons, matters, and things, within the intent and meaning of this act, in the same manner as if they were inserted at large in the same. [Approved, April 12, 1808.]

The act here referred to is that of March 16, 1802, before given.

An act authorizing the President of the United States to raise certain companies of rangers, for the protection of the frontier of the United States.

SEC. 4. *And be it further enacted,* That the officers, non-commissioned officers, and privates, raised pursuant to this act, shall be entitled to the like compensation in case of disability, by wounds and otherwise, incurred in the service, as officers, non-commissioned officers, and privates, in the present military establishment, and with



them shall be subject to the rules and articles of war, which have been established, or may hereafter by law be established; and the provisions of the act, entitled "An act fixing the military peace establishment of the United States," so far as they may be applicable, shall be extended to all persons, matters, and things, within the intent and meaning of this act, in the same manner as if they were inserted at large in the same. This act shall take effect, and be in force, from and after the passage thereof, and continue in force for one year, and from thence to the end of the next session of Congress.

[Approved, January 2, 1812.]

An act to raise an additional military force, and for other purposes.

SEC. 15. *And be it further enacted*, That if any commissioned officer in the military establishment of the United States shall, while in the service of the United States, die by reason of any wound received in the actual service of the United States, and leave a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to and receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years. But in case of the death or intermarriage of such widow before the expiration of the said term of five years, the half pay for the remainder of the time shall go to the child or children of such deceased officer: *Provided, always*, That such half pay shall cease on the decease of such child or children.

[Approved, January 11, 1812.]

An act for the relief of the officers and soldiers who served in the late campaign on the Wabash.

SEC. 2. *And be it further enacted*, That the officers, according to the rank which they held as aforesaid, the non-commissioned officers, and soldiers, of the volunteers or militia, who served in the said campaign, and who were killed, or died of wounds received in said service, leaving a widow, or if no widow, shall have left a child or children, under the age of sixteen, such widow, or if no widow, such child or children, shall be entitled to, and receive, the half of the monthly pay to which the deceased was entitled at the time of his death, or receiving the wound of which he died, for and during the term of five years; and in case of the death or intermarriage of such widow, before the expiration of the term of five years, the half pay, for the remainder of the term, shall go to the child or children of such deceased officer or soldier, whilst under the age of sixteen years; and in like manner the allowance to the child or children of such deceased, where there is no widow, shall be paid no longer than while there is a child or children under the age aforesaid: *Provided*, That no greater sum shall be allowed in any case to the widow, or to the child or children, of any officer, than the half pay of a lieutenant-colonel.

[Approved, April 10, 1812.]

## No. 2.

## FROM THE WAR OF 1812 TO JULY 4, 1836.

An act in addition to the act entitled "An act to raise an additional military force, and for other purposes," passed January 11, 1812.

SEC. 11. *And be it further enacted*, That if any commissioned officer shall, while in the service of the United States, die, by reason of any wound received in actual service of the United States, and leave a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to and receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; but, in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay for the remainder of the time shall go to the child or children of such deceased officer: *Provided, always*, That such half pay shall cease on the decease of such child or children.

[Approved, January 29, 1813.]

An act to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That if any commissioned officer of the militia, or of any volunteer corps, shall, while in the service of the United States, die by reason of any wound received in actual service of the United States, and leave a widow, or if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; but in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay, for the remainder of the time, shall go to the child or children of such deceased officer: *Provided, always*, That such half pay shall cease on the death of such child or children.

SEC. 3. *And be it further enacted*, That the provisions of this act shall be construed to have effect from and after the eighteenth day of June, one thousand eight hundred and twelve.

[Approved, August 2, 1813.]

An act fixing the military peace establishment of the United States.

SEC. 7. *And be it further enacted*, That the several corps, authorized by this act shall be subject to the rules and articles of war, be recruited in the same manner, and with the same limitations; and that officers, non-commissioned officers, musicians, and privates, shall be entitled to the same provision for wounds and disabilities, the same provision for widows and children, and the same benefits and allowances in every respect, not inconsistent with the provisions of this

act, as are authorized by the act of sixteenth March, one thousand eight hundred and two, entitled "An act fixing the military peace establishment of the United States,"\* and the act of the twelfth April, one thousand eight hundred and eight, entitled "An act to raise, for a limited time, an additional military force;"† and that the bounty to the recruit, and compensation to the recruiting officer, shall be the same as are allowed by the aforesaid act of the twelfth of April, one thousand eight hundred and eight.

[Approved, March 3, 1815.]

An act making further provisions for military services during the late war, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, when any officer or private soldier of the militia, including rangers, sea fencibles, and volunteers, or any non-commissioned officer, musician, or private, enlisted for either of the terms of one year or eighteen months, or any commissioned officer of the regular army, shall have died while in the service of the United States, during the late war, or in returning to his place of residence, after being mustered out of service, or who shall have died at any time thereafter, in consequence of wounds received whilst in the service, and shall have left a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; and in case of death or intermarriage of such widow before the expiration of said five years, the half pay for the remainder of the time shall go to the child or children of said decedent: *Provided, always*, That the Secretary of War shall adopt such forms of evidence in applications under this act as the President of the United States may prescribe: \* \* \* \* \* *Provided, also*, That the provisions of this act shall not extend to any person embraced in the provision of the act, entitled "An act to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States," passed the second day of August, one thousand eight hundred and thirteen.

[Approved, April 16, 1816.]

An act to amend an act, entitled "An act making farther provision for military services during the late war, and for other purposes."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the widows and children of soldiers of the militia, the volunteers, the rangers, and the sea fencibles, who served during the late war, and for whom half pay for five years was provided, by an act passed on the sixteenth day of April, one thousand eight hundred and sixteen, entitled "An act making further provision for military services during the late war, and for other purposes," shall be placed on an equality

\* Act of 16th March, 1802.

† Act of 12th April, 1808.

as to their annual allowance, that is to say: Such widows, and in case of no widow, such children, as may be embraced in the before-recited act, shall be entitled to receive (as the half pay to which they are entitled), at the rate of forty-eight dollars per annum, and no more; and the widows and children aforesaid, of the officers of the different corps aforesaid, shall be entitled to the half pay of the officers of the infantry.

SEC. 4. *And be it further enacted*, That the widows and children of the non-commissioned officers of the rangers shall be placed on the same footing as to half pay, for five years, with the widows and children of the infantry.

[Approved, March 3, 1817.]

An act to increase the pay of the militia while in actual service, and for other purposes.

SEC. 2. *Be it further enacted*, That the widows and orphans of the militia who have been called into service of the United States since the first day of September, eighteen hundred and seventeen, or who hereafter may be called into the said service, in prosecuting said war, and who may have died or been killed, or hereafter may die or be killed, in such service, shall be entitled to the same half pay, for five years, and pensions allowed by the laws now in force to the widows and orphans of the militia who died or were killed in the service of the United States during the late war with Great Britain.

[Approved, April 20, 1818.]

An act for the more perfect defence of the frontiers.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in lieu of the battalion of mounted rangers authorized by the act of the fifteenth of June, one thousand eight hundred and thirty-two, there be established a regiment of dragoons, to be composed and organized as follows, &c.

SEC. 3. *And be it further enacted*, That the said regiment of dragoons shall be liable to serve on horse or foot, as the President may direct; shall be subject to the rules and articles of war, be recruited in the same manner, and with the same limitations; that the officers, non-commissioned officers, musicians, farriers, and privates, shall be entitled to the same provisions for wounds and disabilities, the same provisions for widows and children, and the same allowances and benefits in every respect, as are allowed the other troops constituting the present military peace establishment.

Approved, March 2, 1833.]

An act to provide for the payment of volunteers and militia corps in the service of the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the officers, non-commissioned officers, musicians, artificers, and privates, of volunteer and militia corps, who have been in the service of the

United States, at any time since the first of November, in the year of our Lord one thousand eight hundred and thirty-five, or may hereafter be in the service of the United States, shall be entitled to, and receive, the same monthly pay, rations, clothing, or money in lieu thereof, and forage, and be furnished with the same camp equipage, including knapsacks, as are, or may be, provided by law for the officers, musicians, artificers, and privates, of the infantry of the army of the United States.

SEC. 5. *And be it further enacted*, That when any officer, non-commissioned officer, artificer, or private of said militia or volunteer corps, who shall die in the service of the United States or returning to his place of residence after being mustered out of service, or at any time in consequence of wounds received in service, and shall leave a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; and in case of the death or intermarriage of such widow before the expiration of five years, the half pay for the remainder of the time shall go to the child or children of said decedent: *Provided, always*, That the Secretary of War shall adopt such forms of evidence, in applications under this act, as the President of the United States may prescribe.

SEC. 6. *And be it further enacted*, That the volunteers and militia, mentioned in the foregoing provisions of this act, called into service before its passage, and who are directed to be paid, shall embrace those only ordered into service by the commanding generals or governors of States, and of the Territory of Florida, under authority from the War Department, for repressing the hostilities of the Florida Indians.

[Approved, March 19, 1836.]

The Third Auditor has never prescribed any form of application, nor issued any regulations, to direct applicants under the acts before given. Each one may therefore employ his own language, taking care to state succinctly all the facts in the case, or he may take as his guide the forms given under the acts executed by the Commissioner of Pensions.

## No. II.

## LAWS EXECUTED AT THE PENSION OFFICE.

## No. 2.

## FROM JULY 4, 1836, TO THE PRESENT TIME.

An act granting half pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States in certain cases, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when any officer, non-commissioned officer, musician, or private, of the militia, including rangers, sea fencibles, and volunteers, shall have died while in the service of the United States, since the twentieth day of April, eighteen hundred and eighteen, or who shall have died in consequence of a wound received whilst in the service, since the day aforesaid, and shall have left a widow, or, if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death or receiving such wound, for and during the term of five years; and in case of the death or marriage of such widow before the expiration of said five years, the half pay for the remainder of the time shall go to the said decedent: *Provided,* That the half pay aforesaid shall be half the monthly pay of the officers, non-commissioned officers, musicians and privates of the infantry of the regular army, and no more: *Provided, also,* That no greater sum shall be allowed to the widow or to the child or children of any officer, than the half pay of a lieutenant-colonel.

SEC. 4. *And be it further enacted,* That any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest, in any money or half pay granted by this act, shall be utterly void and of no effect; each person acting for and in behalf of any one entitled to money under this act, shall take and subscribe, on oath, to be administered by the proper accounting officer, and returned by him and put on file, before a warrant shall be delivered to him, that he has no interest in said money by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person whatever.

[Approved, July 4, 1836.]

An act amending the act entitled "An act granting half pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States," in case of deceased officers and soldiers of the militia and volunteers, passed July 4th, eighteen hundred and thirty-six.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the

provisions of the first section of the act entitled "An act granting half pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes," approved July 4th, eighteen hundred and thirty-six, shall be applicable to all widows and orphans of officers, non-commissioned officers, musicians, and soldiers, of the army of the United States, who were in the army of the United States on the first day of March, eighteen hundred and forty-six, or at any subsequent period during the present war between the United States and Mexico.

SEC. 2. *And be it further enacted*, That all widows and orphans of officers, non-commissioned officers, musicians, and privates, whether of the regular army or of volunteers, who have died since the first day of April, one thousand eight hundred and forty-six, or who may die during the war with Mexico, from wounds received or from disease contracted while in the line of duty, shall be entitled to the same rate of pension as is provided for in the first section of the before-mentioned act, under like limitations and restrictions: *Provided*, said death has occurred, or may hereafter occur, while said officers, non-commissioned officers, musicians, or privates, were in the service of the United States, and in the line of duty; or while returning to their usual place of residence in the United States, after having received a discharge upon a surgeon's certificate for disability incurred from wounds received, or disease contracted, while in the line of duty, or while on their march to join the army in Mexico: *And provided further*, That this act shall not be applicable to the widows and orphans of such officers, non-commissioned officers, musicians, or privates, who have not served in Mexico, or at posts or stations on the borders of Mexico, except where such officers, non-commissioned officers, musicians, or privates, have died while on their march to join the army in Mexico.

SEC. 3. *And be it further enacted*, That all pensions under this act shall be granted under such rules, regulations, restrictions, and limitations as the Secretary of War, with the approbation of the United States, may prescribe. [Approved, July 21, 1848.]

An act granting five years' half pay to certain widows and orphans of officers, non-commissioned officers, musicians, and privates, both regulars and volunteers.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of the second section of the act entitled "An act amending the act entitled 'An act granting half pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States,' in cases of deceased officers and soldiers of the militia and volunteers," approved July twenty-first, eighteen hundred and forty-eight, shall be so construed as to embrace all widows and orphans of officers, non-commissioned officers, musicians, and privates, whether of the regular army or of volunteers, who have received an honorable discharge, or who

remained to the date of their death in the military service of the United States, and who have died, since their return to their usual place of residence, of wounds received or from disease contracted while in line of duty, subject to such rules, regulations, and restrictions as the Secretary of War, by the third section of said act, is authorized to impose. [Approved, February 22, 1849.]

Joint resolution explanatory of certain acts therein mentioned.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of the second section of the act entitled "An act amending the act entitled 'An act granting half pay to widows or orphans where their husbands and fathers have died of wounds received in the military service of the United States,'" approved July twenty-one, eighteen hundred and forty-eight, extended by the act of February twenty-two, eighteen hundred and forty-nine, shall be construed to embrace the widows and orphans of all persons designated therein, who died while in actual service in the late war with Mexico, or in going to and returning from the same; and also to the widows and orphans of all such persons as, having been honorably discharged, or having resigned, shall have died after the passage of said last mentioned act, or who may hereafter die, of wounds received or from disease contracted while in said service: *Provided*, That the army rolls showing the death of any of said persons in the army shall be sufficient evidence to establish that fact. [Approved, September 28, 1850.]

An act to continue half pay to certain widows and orphans.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all widows and orphans who were granted and allowed five years' half pay by the provisions of the act approved the twenty-first day of July, one thousand eight hundred and forty-eight, entitled "An act amending the act granting half pay to widows or orphans, when their husbands or fathers have died of wounds received in the military service of the United States, in case of deceased officers and soldiers of the militia and volunteers, passed July the fourth, one thousand eight hundred and thirty-six," or an act approved the twenty-second day of February, one thousand eight hundred and forty-nine, entitled "An act granting five years' half pay to certain widows and orphans of officers, non-commissioned officers, musicians, and privates, both regulars and volunteers," be, and they are hereby granted a continuance of said half pay, under like limitations and restrictions for a further period of five years, to commence at the expiration of the half pay provided for by the aforesaid acts: *Provided, however*, That in case of the death or marriage of such widow before the expiration of said term of five years, the half pay for the remainder of the term shall go to the child or children of the deceased officer or soldier, whilst under



the age of sixteen years; and in like manner the child or children of such deceased, where there is no widow, shall be paid no longer than while there is a child or children under the age aforesaid: *And provided, further*, That no greater sum shall be allowed in any case to the widow or the child or children of any officer than the half pay of a lieutenant-colonel: *And provided, further*, That the act approved the twenty-second of February, one thousand eight hundred and forty-nine, granting five years' half pay to certain widows and orphans of officers, non-commissioned officers, musicians, and privates, both regulars and volunteers, be so extended and continued as to embrace the widows and minor heirs of the officers, non-commissioned officers, musicians, and privates, of the regulars, militia, and volunteers, of the war of 1812, and of the various Indian wars since 1790.

[Approved, February 3, 1853.]

#### PRINCIPLES AND DECISIONS RELATING TO ARMY WIDOWS' PENSIONS.

##### No. 1.

*Widow remarried before the act passes, the children are entitled.*

SIR: In answer to the question proposed in the communication of the acting Commissioner of Pensions, enclosed in your letter of the 26th ultimo, I have the honor to inform you that, in my opinion, where a soldier embraced in the 1st section of the act of the 4th of July, 1836, has died, leaving a widow and children, and the widow has married before the passage of the act, the children, within the equity of the law, and by a liberal construction of its provisions, are entitled to its benefits.

[Opinion of Attorney-General, August 3, 1836.]

##### No. 2.

*Commencement of Pension.*

SIR: In answer to the question proposed by the Commissioner of Pensions, on the 1st section of the act of the 4th of July, 1836, granting half pay to widows and orphans, I have the honor to reply as follows:

In my opinion, the pension granted by this section is to commence from the day when the bill was approved and became a law, as to all cases in which the death of the party serving had occurred anterior to that day; and, in all subsequent cases, from the time of the death of such party. Pension laws, drawn in the form used in this law, have usually been regarded in this office as vesting in the widow or children (as the case may be) a legal right to a pension from the day of the death of the husband or parent; but, as this is a new law, it cannot have the effect to give such a right for any time anterior to its passage.

[Opinion of Attorney-General, October 24, 1836.]

## No. 3.

*Act of 4th July, 1836, is prospective.*

As already intimated, I think the 1st section embraces the cases of widows and orphans whose husbands and fathers may hereafter die in the service, as well as those who had died before the passage of the law.

## No. 4.

*Paymasters' widows and children entitled.*

SIR: By yours of the 15th instant, my opinion is asked whether the widows and children of paymasters of the army are entitled to the benefit of the 15th section of the act of the 16th of March, 1832, fixing the military peace establishment of the United States?

It was decided by my immediate predecessor, in an opinion given on the 16th of March, 1836, that the 15th section of the act referred to was still in force. Adopting that opinion (which accords with my own) as correct, the only inquiry is, Does it embrace paymasters? The language is, "That if any commissioned officer in the military peace establishment of the United States shall, while in the service of the United States, die by reason of any wound received in actual service of the United States, and leave a widow," &c.

Paymasters are nominated by the President, and confirmed by the Senate, and then commissioned by the President. They are then commissioned officers; they belong to the military branch of the public service, and are at all times subject to the orders of the War Department. It therefore seems to me that they are clearly within the terms and meaning of the 15th section of the act of the 16th March, 1832; and, of course, my opinion is, that the widow and children are entitled to the benefit of the provisions of said section.

[Opinion of Attorney-General, March 22, 1839.]

## No. 5.

*Death caused by intemperance.*

If the soldier's death is caused by intemperance, his widow is not entitled under the act of July 21, 1848.

[Secretary of the Interior, October 10, 1850.]

## No. 6.

*Proof.*

Joint Resolution relative to evidence in applications for pensions by widows of deceased soldiers, under the act of July twenty-first, eighteen hundred and forty-eight.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all applications for pensions by the widows of deceased soldiers, under the act of July*

twenty-first, eighteen hundred and forty-eight, the returns on the rolls of the disease of which the soldier died, and the official opinion of the surgeon-general founded thereon, that from the nature of the disease it was contracted while the soldier was in the line of his duty, shall be considered satisfactory evidence thereof, without the proof now required at the Pension Office; and that it shall be the duty of the Commissioner of Pensions, in all cases of application for pensions under said act, to apply to the proper officers for said evidence, without requiring the applicant to furnish the same.

Where it is shown that the husband died in the service, the presumption, in the absence of proof to the contrary, is, that he died of a disease contracted in the line of his duty.

[Secretary of the Interior, case of Rush Elliott.]

### No. 7.

*Being killed by Indians in a time of peace does not entitle the widow.*

Where a soldier was killed in a time of peace by a band of marauding Indians, the widow is not entitled under the act of February 3, 1853.

[Secretary of the Interior, case of Sarah R. Darley.]

### FORM OF DECLARATION AND REGULATIONS.

The following regulations and form of application may be used by claimants under any of the foregoing acts, changing the title of the act to that under which the claim is asserted:

1. Applicants must produce the best proof the nature of the case will allow, as to the service of the deceased officer or soldier, the time when he died, and the complaint of which he died, and the supposed cause of his disease. It must be clearly shown in what company and regiment, or corps, he served, and the grade he held. Such proof must be had, either from the records of the War Department, the muster rolls, the testimony of commissioned officers, or the affidavits of persons of known respectability. From similar sources evidence must be derived as to the period and cause of the death of the officer or soldier.

2. The legality of the marriage, the name of the widow, with those of her children who may have been under sixteen years of age at the time of the father's decease, with the State or Territory and county in which she and they reside, should be established. The legality of the marriage may be ascertained by the certificate of the clergyman who joined them in wedlock, or the testimony of respectable persons having knowledge of the fact. The age and number of children may be ascertained by the deposition of the mother, accompanied by the testimony of respectable persons having knowledge of them, or by transcripts from the parish registers, duly authenticated. The widow, at the time of allowing the half pay, or placing her on the list for it, must show that she has not again married, and must, moreover, repeat this at the time of receiving each and every payment thereof; because in case of her marrying again, the half pay to her ceases,

and the half pay for the remainder of the time shall go to the child or children of the decedent. This may be done by the affidavits of respectable persons having knowledge of the case.

3. In cases where there are children, and no widow, their guardian will, of course, act for them, and establish their claims as prescribed in the foregoing regulations, and receive their stipends for them.

4. In a case where the service of the deceased officer or soldier is clearly proved by record or documentary evidence, or the affidavit of a commissioned officer, showing the grade and length of service of the deceased, the particulars in relation to the service are not required to be set forth in the claimant's declaration, except so far as to show that the claimant or claimants is, or are, the widow or children of the deceased.

5. Applicants unable to appear in court by reason of bodily infirmity, may make their declarations before required, before a judge, or justice of a court of record of the county in which they reside; and the judge, or justice, will certify that the applicant cannot, from bodily infirmity, attend the court.

6. Whenever any official act is required to be done by a judge, or justice of a court of record, or by a justice of the peace, the certificate of the Secretary of State, or of the Territory, or of the proper clerk of the court, or county, under his seal of office, will be annexed, stating that such a person is a judge, or justice of a court of record, or a justice of the peace, and that the signature annexed is his genuine signature.

7. The judge, or justice, who may administer an oath, must, in every instance, certify to the credibility of the affiant.

#### DECLARATION

In order to obtain the benefit of the third section of the Act of Congress of the 4th July, 1836.

State, Territory, or District }  
of ..... } ss.

On this ..... day of ....., personally appeared before the ..... of the ..... A. B. a resident of ....., in the County of ....., and State, Territory, or District of ....., aged ..... years, who being first duly sworn according to law, doth, on her oath, make the following declaration, in order to obtain the benefit of the provision made by the act of Congress, passed July 4, 1836 : That she is the widow of ....., who was a [here insert the rank the husband held in the army, navy, or militia, as the case may be, and specify the service performed, as directed in rule number four of these regulations.]

She further declares that she was married to the said ..... on the ..... day of ....., in the year seventeen hundred and ..... ; that her husband, the aforesaid ....., died on the ..... day of ..... ; and that she has remained a widow ever since that period, as will more fully appear by reference to the proof hereto annexed.

Sworn to, and subscribed, on the day and year above written, before .....

Under the 1st section of the act of February 3, 1853, an extension of pension is granted to the widows therein described. The following form will be observed by one applying for this continuance : —

# DECLARATION

In order to obtain the renewal of the half pay provided for in the 1st section of the act of February 3, 1853.

State, Territory, or District }  
of ..... } ss.

On this ..... day of ....., personally appeared before the ....., A. B., a resident of ....., in the county of ....., aged ..... years, who being first duly sworn according to law, doth, on her oath, make the following declaration in order to obtain the benefits of the provision made by the act of Congress, passed the 3d February, 1853, granting the renewal of half pay to certain widows and orphans; that she is the widow of ....., who was a [here insert the rank the husband held, the company and regiment in which he served, and the monthly amount of the half pay which she received under the 1st section of the act of 4th July, 1836, or 21st July, 1848.] She further declares that she is still a widow.

(Declarant's signature.)

Sworn to and subscribed on the day and year above written, before me—

C. D., J. P.



# COMMUTATION OF PENSION FOR BOUNTY LAND.

An act making further provision for military services during the war, and for other purposes.

SEC. 2. *And be it further enacted,* That when any non-commissioned officer, musician, or private soldier, of the regular army of the United States, shall have been killed in battle, or have died of wounds or disease, while in the service of the United States, during the late war, and have left a child or children, under sixteen years of age, it shall be lawful for the guardian of such child or children, within one year from the passage of this act, to relinquish the bounty land to which such non-commissioned officer, musician, or private soldier, had he survived the war, would have been entitled; and, in lieu thereof, to receive half the monthly pay to which such deceased person was entitled at the time of his death, for and during the term of five years, to be computed from and after the seventeenth day of February, one thousand eight hundred and fifteen; the payment thereof to be made when and where other military pensions are or shall be paid; and where a warrant for the military bounty land aforesaid shall have been issued to or for the use of the child or children of any such deceased non-commissioned officer, musician, or private soldier, such child or children, or either of them, being under sixteen years of age, it shall be lawful for the guardian of such minor or minors, to surrender and deliver such warrant into the office for the Department of

War, within one year from the passage of this act; of which surrender and delivery the Secretary of that Department shall give notice to the Secretary of the Treasury, who shall thereupon give the requisite orders for the payment of the half pay hereby provided for.

[Approved, April 16, 1816.]

This act was continued two years by the act of March 3, 1817, and again for three years, by that of March 3, 1819, since which time it has never been revived.

## PART IV.

### NAVY INVALID PENSIONS.

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No. 1.

#### OF THE NAVY PROPER AND MARINES.

An act providing a naval armament.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby empowered, should he deem it expedient, to cause the frigates United States, Constitution, and Constellation, to be manned and employed.

SEC. 2. *And be it further enacted,* That there shall be employed on board each of the ships of forty-four guns, one captain, four lieutenants, two lieutenants of marines, one chaplain, one surgeon, and two surgeon's mates; and in the ship of thirty-six guns, one captain, three lieutenants, one lieutenant of marines, one surgeon, and one surgeon's mate.

SEC. 3. *And be it further enacted,* That there shall be employed, in each of the said ships, the following warrant officers, who shall be appointed by the President of the United States, to wit: one sailing-master, one purser, one boatswain, one gunner, one sailmaker, one carpenter, and eight midshipmen; and the following petty officers, who shall be appointed by the captains of the ships, respectively, in which they are to be employed, viz: two master's mates, one captain's clerk, two boatswain's mates, one cockswain, one sailmaker's mate, two gunner's mates, one yeoman of the gunroom, nine quarter gunners (and, for the two larger ships, two additional quarter gunners), two carpenter's mates, one armorer, one steward, one cooper, one master at arms, and one cook.

SEC. 4. *And be it further enacted,* That the crews of each of the ships of forty-four guns shall consist of one hundred and fifty seamen, one hundred and three midshipmen and ordinary seamen, three sergeants, three corporals, one drum, one fife, and fifty marines; and

that the crew of the ship of thirty-six guns, shall consist of one hundred and thirty able seamen and midshipmen, ninety ordinary seamen, two sergeants, two corporals, one drum, one fife, and forty marines, over and above the officers herein before mentioned.

SEC. 11. *And be it further enacted*, That if any officer, non-commissioned officer, marine, or seaman, belonging to the navy of the United States, shall be wounded or disabled, while in the line of his duty in public service, he shall be placed on the list of the invalids of the United States, at such rate of pay, and under such regulations, as shall be directed by the President of the United States; *Provided always*, That the rate of compensation to be allowed for such wounds or disabilities, to a commissioned or warrant officer, shall never exceed, for the highest disability, half the monthly pay of such officer at the time of his being so disabled or wounded; and that the rate of compensation to non-commissioned officers, marines, and seamen, shall never exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

[Approved, July 1, 1791.]

An act for the government of the navy of the United States.

SEC. 8. *And be it further enacted*, That every officer, seaman, or marine, disabled in the line of his duty, shall be entitled to receive, for his own life and the life of his wife, if a married man at the time of receiving the wound, one-half his monthly pay.

SEC. 9. *And be it further enacted*, That all the money accruing, or which has already accrued, from the sale of prizes, shall be and remain forever a fund for the payment of the half pay to the officers and seamen who may be entitled to receive the same; and if the said fund shall be insufficient for this purpose, the public faith is hereby pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied as Congress may hereafter direct by law, to the making of further provision for the comfort of the disabled officers, seamen, and marines, and for such as may not be disabled, who may merit, by their bravery, or their long and faithful services, the gratitude of their country.

SEC. 10. *And be it further enacted*, That the said fund shall be under the management and direction of the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War, for the time being, who are hereby authorized to receive all such sums as the United States may be entitled to, from the sale of prizes, and to invest the same, and the interest arising therefrom, in such of the six per cent. or other stock of the United States, as a majority of them, from time to time, shall determine to be most advantageous; and it shall be the duty of the said commissioner to lay before Congress, every year, in the first week of their annual meeting, a minute and correct statement of their proceedings, in relation to the management of said fund.

[Approved, March 2, 1799.]

This act was repealed by the following one, which is the basis of the present naval pension system of the United States: —



An act for the better government of the navy of the United States.

SEC. 8. *And be it further enacted*, That every officer, seaman, or marine, disabled in the line of his duty, shall be entitled to receive for life, or during his disability, a pension from the United States, according to the nature and degree of his disability, not exceeding one-half his monthly pay.

SEC. 9. *And be it further enacted*, That all money accruing, or which has already accrued, to the United States from the sale of prizes, shall be and remain forever a fund for the payment of pensions and half pay, should the same be hereafter granted, to the officers and seamen who may be entitled to receive the same; and if the said fund shall be insufficient for the purpose, the public faith is hereby pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied to the making of further provision for the comfort of the disabled officers, seamen, and marines, and for such as, though not disabled, may merit by their bravery, or long and faithful services, the gratitude of their country.

SEC. 10. *And be it further enacted*, That the said fund shall be under the management and direction of the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War, for the time being, who are hereby authorized to receive any sums to which the United States may be entitled from the sale of prizes, and employ and invest the same, with the interest arising therefrom, in any manner which a majority of them may deem most advantageous. And it shall be the duty of the said commissioners to lay before Congress annually, in the first week of their session, a minute statement of their proceedings relative to the management of said fund.

[Approved, April 23, 1800.]

An act in relation to the navy pension fund.

SEC. 6. *And be it further enacted*, That the commissioners of the navy pension fund be, and they are hereby authorized and directed to make such regulations as may to them appear expedient, for the admission of persons on the roll of navy pensioners, and for the payment of the pensions.

[Approved, March 26, 1804.]

An act renewing certain naval pensions, and extending the benefits of existing laws, respecting naval pensions, to engineers, firemen, and coal-heavers, in the navy, and to their widows.

SEC. 2. *And be it further enacted*, That engineers, firemen, and coal-heavers in the navy shall be entitled to pensions in the same manner as officers, seamen, and marines; and the widows of engineers, coal-heavers, and firemen in the same manner as the widows of officers, seamen, and marines: *Provided*, That the pension of a chief engineer shall be the same as that of a lieutenant in the navy; and a pension of the widow of a chief engineer the same as that of the widow of a lieutenant in the navy; the pension of a first assistant engineer the same as that of a lieutenant of marines; and the pension of the widow of a first assistant engineer the same as that of the widow of a lieutenant of marines; the pension of a second or third

assistant engineer the same as that of a forward officer; and the pension of the widow of a second or third assistant engineer the same as that of the widow of a forward officer; the pension of a fireman or coal-heaver the same as that of a seaman; the pension of the widow of a fireman or coal-heaver the same as that of the widow of a seaman: *And provided further*, That an engineer, fireman, or coal-heaver shall not be entitled to any pension by reason of a disability incurred prior to the thirty-first of August, eighteen hundred and forty-two, nor shall the widow of an engineer, fireman, or coal-heaver be entitled to any pension by reason of the death of her husband, if his death was prior to the said date.

SEC. 3. *And be it further enacted*, That the amount of pension in every case arising under this law [is] not to exceed the half pay of the deceased officer, seaman, or marine, as it existed in January, eighteen hundred and thirty-five, or such rate of pension as is allowed by this act. [Approved, August 11, 1848.]

An act for the establishing and organizing a marine corps.

SEC. 4. *And be it further enacted*, That the officers, non-commissioned officers, privates, and musicians, aforesaid, shall take the same oath, and shall be governed by the same rules and articles of war, as are prescribed for the military establishment of the United States, and by the rules for the regulation of the navy, heretofore, or which shall be established by law, according to the nature of the service in which they shall be employed, and shall be entitled to the same allowance, in case of wounds or disabilities, according to their respective ranks, as are granted by the act "to ascertain and fix the military establishment of the United States." [Approved, July 11, 1798.]

## No. 2.

### OF PRIVATEERS.

An act concerning letters of marque, prizes, and prize-goods.

SEC. 17. *And be it further enacted*, That two per centum on the nett amount (after deducting all charges and expenditures) of the prize money arising from captured vessels and cargoes, and on the nett amount of the salvage of vessels and cargoes recaptured by the private armed vessels of the United States, shall be secured and paid over to the collector, or other chief officer of the customs, at the port or place in the United States at which such captured or recaptured vessel may arrive; or to the consul, or other public agent of the United States, residing at the port or place not within the United States, at which such captured or recaptured vessels may arrive. And the moneys arising therefrom shall be held, and hereby is pledged by the Government of the United States, as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of such persons as may be wounded and disabled, on board the private armed

vessels of the United States, in any engagement with the enemy, to be assigned and distributed in such manner as shall hereafter by law be provided.

[Approved, June 26, 1812.]

An act regulating pensions to persons on board private armed ships.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the two per centum reserved in the hands of the collectors and consuls, by the act of June, eighteen hundred and twelve, entitled "An act concerning letters of marque, prizes, and prize goods," shall be paid to [into] the Treasury, under the like regulations provided for other public money, and shall constitute a fund for the purposes provided for by the seventeenth section of the beforementioned act.

SEC. 2. *And be it further enacted,* That the Secretary of the Navy be authorized and required to place on the pension list, under the like regulations and restrictions as are used in relation to the Navy of the United States, any officer, seaman, or marine, who, on board of any private armed ship or vessel bearing a commission of letter of marque, shall have been wounded, or otherwise disabled, in any engagement with the enemy: allowing to the captain a sum not exceeding twenty dollars per month; to lieutenants and sailing-master, a sum not exceeding twelve dollars each per month; to marine-officer, boatswain, gunner, carpenter, master's mate, and prize-masters, a sum not exceeding ten dollars each per month; to all other officers, a sum not exceeding eight dollars each per month—for the highest rate of disability, and so in proportion; and to a seaman, or acting as a marine, the sum of six dollars per month, for the highest rate of disability, and so in proportion: which several pensions shall be paid, by direction of the Secretary of the Navy, out of the fund above provided, and from no other.

[Approved, February 13, 1813.]

An act to amend and explain the act regulating pensions to persons on board of private armed ships.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act regulating pensions to persons on board private armed ships shall be so construed as to authorize the Secretary of the Navy to place on the pension list, under the restrictions and regulations of the said act, any officer, seaman, or marine, belonging to any private armed ship or vessel of the United States, bearing a commission of letter of marque, who shall have been wounded, or otherwise disabled, in the line of their duty as officers, seamen, or marines, of such private armed ship or vessel.

[Approved, August 2, 1813.]

The Privateer-Fund having been long since exhausted, pensioners of this class have ceased to have any demand upon the Government for a gratuity, which has sometimes been continued to them under the annual appropriation acts, and sometimes refused. The present appropriation for that purpose expires June 30, 1854, and nothing has yet been done by Congress to renew it.

## PRINCIPLES AND DECISIONS CONCERNING ARMY INVALID PENSIONS.

## No. 1.

*Powers of the Secretary.*

The Navy Fund was, by the acts of April 23, 1800, and March 26, 1804, placed under the management of the Navy Board, with large discretionary powers as to the vesting of money and the admission of persons on the pension rolls. This authority has not been taken away or abridged by any subsequent act.

[Opinion of Attorney-General, April 27, 1821.]

As all the powers and duties of the Commissioner of the Navy Pension Fund have been devolved upon the Secretary of the Navy, [now of the Interior,] it rests with him to establish the circumstances under which one shall be admitted as a pensioner.

[Opinion of Attorney-General, December 17, 1832.]

The power given to the Commissioners by the act of March 26, 1804, to make such regulations as might to them appear expedient for the admission of persons on the roll of Navy pensioners, authorized the Commissioners to fix the period at which the pension should commence, and also the principles by which the amount was to be graduated. They might have declared that the pension should begin from the time of the disability; or they might have determined that it should commence at the date of the application and exhibition of proof, if they deemed the latter period more consonant to the spirit of the law. And in the absence of any regulations on the subject, it was their province to exercise a sound discretion in this respect, in every case as it came before them.

The Commissioners have, it seems, fixed 1828 as the time for the commencement of the pension they allowed to Captain Jones. It is immaterial whether, in deciding upon this point, the Commissioners were governed by what they considered to be the regulations; or whether, in the absence of any regulation, they exercised the discretion with which the law had clothed them. In either case, they were the competent authority to decide; and their decision is, I think, binding upon you, unless you are satisfied, by the evidence before you, that it was given under mistake of fact; and that the date of the commencement of the pension would have been fixed otherwise, but for this mistake. For example: if you are satisfied by the proof that the Commissioners took 1828 as the period for the commencement of the pension, under the impression that the first application had been made at that time, when, in fact, it had been made earlier; and had remained altogether unacted on without any fault of Captain Jones, — then it is in your power to correct the mistake, if, in your judgment, justice to Captain Jones requires it. But whether justice to him does or does not require it, is a question exclusively for your own discretion. In the absence, however, of such proof of mistake as you may think sufficient, you cannot legally revise the decision

heretofore given, either as respects the time of the commencement of the pension, or the sum allowed, so as to give your decision a retrospective operation. You may, indeed, at any time examine into the claims of the party; and if, from the evidence of increased disability, or new evidence of the extent of the disability, you believe he is entitled to a higher pension than he is then receiving, you may allow it, to the extent of the limits mentioned in the law. But the increase in such a case must be prospective, and begin from the date of your decision. It cannot be retroactive.

An opinion was given on the 21st of December, 1832, by the present Chief Justice of the United States, as Attorney-General, that the power conferred upon the Commissioners by the act of 1804, authorized them "to fix the period at which the pension should commence, and also the principles by which the amount was to be graduated;" that "they might have declared that the pension should begin from the time of the disability, or they might have determined that it should commence at the date of the application and exhibition of proof, if they deemed the latter period more consonant to the spirit of the law;" and "that in the absence of any regulations on the subject, it was their province to exercise a sound discretion in this respect in every case as it came before them."

This opinion, in which I fully concur, furnishes an answer to the inquiry when the pension of James Cochran shall commence.

It rests with the Secretary of the Navy to decide according to the regulations now in force; or if there be no regulation, then to exercise a sound discretion — not an arbitrary discretion, but according to the settled course of the Department. The Secretary has undoubtedly the power to correct any erroneous course heretofore pursued by a new regulation, or by setting a new precedent to be the guide in future, or to introduce a more perfect rule, or a class of exceptions, for sufficient reasons, to any general rule. This would be but the legitimate exercise of the power to make such regulations as might to him appear expedient for the admission of persons on the roll of Navy pensioners; but it would be directly repugnant to the character of the power conferred, to suppose that a power to make rules was a power to dispense with them altogether, and to substitute in their place caprice or arbitrary discretion.

And if it has been the settled rule of the Department to decide that the pension shall commence at the time of completing the proofs, in conformity with the rules prescribed by Congress in the case of those pensioners who were disabled by known wounds received in the revolutionary war, it would certainly be very difficult for the Secretary, in the exercise of a sound discretion, at this late day to depart from it.

The act of March 26, 1804, gives power to establish rules and regulations to be observed in the examination and adjudication of the legal claims of a class of persons to be admitted on the rolls of Navy pensioners; and does not extend to the enactment of a statute of limitations, or of any rule which would preclude any examination,

and, of course, any adjudication. Such a rule would be in derogation of the act of Congress, and not an execution of it.

[Opinion of Attorney-General, February 16, 1849.]

## No. 2.

### *Line of duty.*

One of our seamen, captured by the Tripolitans in 1803, on board the frigate Philadelphia, after fifteen months' rigorous captivity, made an attempt, with five of his messmates, to recover liberty and rejoin the American squadron then outside the harbor of Tripoli. The attempt proved abortive; he, and his companions in suffering, were retaken, brought back, and punished by bastinado in the most cruel manner, the effects of which were so severe as to render one of the party ever afterwards incapable of performing duty as a seaman. I have no hesitation in expressing the opinion, that the case of the seaman now under consideration is not only within the spirit and reason of the act of April 23, 1800, but, by a fair and liberal construction, within its letter too. He was, I think, as much within *the line of his duty* when the disability occurred, as if he had been disabled in the original capture of the Philadelphia, or in a recent attempt, immediately thereafter, to escape from captivity and return to his duty. A different construction would, I think, be too narrow; would be inconsistent with the policy, as well as the liberality of the provisions; and wholly incompatible with the more expanded purposes to which this fund is expressly devoted.

[Opinion of Attorney-General, April 17, 1821.]

## No. 3.

### *Proof.*

The act of Congress of March 3, 1819, "regulating the payments to invalid pensioners," requires "*the affidavits* of two surgeons or physicians, whose credibility as such shall be certified by the magistrate before whom the affidavit is made, stating the continuance of the disability," &c. I am of the opinion that it would be irregular in your Department to accept the mere *certificate* even of a Navy surgeon, in lieu of the *affidavit* so expressly required by the law; and although the circumstance of their being *surgeons in the Navy* might seem to dispense with the necessity of a certificate of their credibility, yet, as the law has also expressly required *that*, and as the surgeons will have to go before a magistrate to make their affidavit, there will be but little additional trouble in satisfying the requisition of the law in both particulars; which had therefore better be done.

[Opinion of Attorney-General, January 17, 1822.]

## No. 4.

### *Commencement of pension.*

There is no authority for granting pensions for deaths or disabilities which occurred before the Pension Fund was established by the

act of April 23, 1800. The second section of the act of March 3, 1837, does not embrace a class of persons not included in former laws.

[Opinion of Attorney-General, September 3, 1838.]

An act for the more equitable administration of the Navy Pension Fund.

SEC. 2. *And be it further enacted*, That the pensions which may have been granted, or which may hereafter be granted, to officers, seamen, and marines, in the naval service, disabled by wounds or injuries received while in the line of their duty, shall be considered to commence from the time of their being so disabled.

[Approved, March 3, 1837.]

An act making an appropriation to supply a deficiency in the Navy Pension Fund.

SEC. 2. *And be it further enacted*, That the act entitled "An act to provide for the more equitable administration of the Navy Pension Fund," approved March third, eighteen hundred and thirty-seven, be, and the same is hereby, repealed, from and after the first day of July, eighteen hundred and forty-two.

[Approved, August 23, 1842.]

Under the act of 1804, the practice, I understand, was to date the pension from the completion of the proof, and not the beginning of the disability; thus making the rule upon the subject of all pensions the same, by regulation under the provisions of the act of 1804, and by law under the very terms of the act of April 10, 1806; that is to say, dating them from the proof of title, and not from the happening of the disability. In the subsequent case of James Cochrane, my immediate predecessor, Mr. Toucey, concurred fully in the view taken by Mr. Taney, and said that it rested with the Secretary of the Navy to decide according to the regulations now in force; or, if no regulations are, then to exercise a sound discretion — not an arbitrary one, but a discretion according to the settled course of the Department. He also says: "If it has been the settled rule of the Department to decide that the pension shall commence at the time of completing the proofs, in conformity with the rule prescribed by Congress in the case of those pensioners who were disabled by known wounds received in the revolutionary war, it would certainly be very difficult for the Secretary, in the exercise of a sound discretion, at this late day to dissent from it."

I think both of these opinions are sound; and, although it may be doubtful whether the section you refer to in the act of 1822, though general in its terms, does apply to other than revolutionary pensions, I think the claim in the present case cannot be allowed. It is ever unsafe to unsettle a fixed and established practice in matters of this kind. It might subject the government to unlimited demands, and at a period when the means of detecting the injustice are lost.

[Opinion of Attorney-General, July 14, 1849.]

## No. 5

*Holding a naval or civil office, how far it bars pension.*

An act to provide for the payment of navy pensions.

SEC. 2. *And be it further enacted*, That no officer, seaman, or marine, entitled to a pension from the navy pension fund, who receives pay from the public treasury, shall receive more from the said fund than is sufficient to make the whole amount, received from both the above-named sources, equal to the pay fixed by law for the grade to which the officer, seaman, or marine may belong as an officer in the services in which he may be engaged, during the year, so that no officer shall receive pay at the same time both as a pensioner and an officer in service. [Approved, August 16, 1841.]

An act making appropriations for the payment of revolutionary and other pensioners of the United States, for the fiscal year ending on the 30th June, 1845.

*And provided, also*, That no person in the army, navy, or marine corps, shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability for which the pension was granted be such as to have occasioned his employment in a lower grade, or in some civil branch of the service. [Approved, April 30, 1844.]

SIR: The following question, submitted to you by the Second Comptroller, has been considered by me: "Captain David Porter, Minister at Constantinople, is borne on the navy-pension-roll at the rate of \$40 per month. I have respectfully to inquire whether he is entitled to his pension under the law of August 16, 1841, c. 8, while he is in the receipt of his pay as minister?" I am of opinion that the case of the minister at Constantinople does not fall within the second section of the act of August 16, 1841, which seems confined to persons in the naval service. [Opinion of Attorney-General, May 26, 1842.]

The questions submitted from the Navy Department in the case of Lieutenant Brownell, are in substance as follows:—

1st. Whether he is legally entitled to a pension while on duty, and in receipt of his pay as an officer of the navy?

2. Whether, under the restrictions hereinafter recited, he can receive a pension when not on duty, but receiving the pay allowed to his grade while unemployed?

The act of the 18th February, 1847, granting his pension, contains the following restrictions: That "the payment of said pension be subject to the provisions of the second section of an act passed August 16, 1841, entitled "An act for the payment of Navy pensions."

The second section of the act of 1841, above referred to, recites the conditions upon which the payment of pensions in certain cases



is made to depend, as follows: "That no officer, seaman or marine, entitled to a pension from the Navy Pension Fund, who receives pay from the public Treasury, shall receive more from the said fund than is sufficient to make the whole amount received from both the above-named sources equal to the pay fixed by law for the grade to which the officer, seaman or marine may belong as an officer in the service in which he may be engaged, during the year, so that no officer shall receive pay at the same time both as a pensioner and an officer in service." It is very clear, in my judgment, that Lieutenant Brownell's case must be governed, and the payments to him regulated, by the rule prescribed in that section. It is expressly referred to, and recognized, in the act granting the pension. The intention of Congress is too clearly manifested to leave any room for doubt. It is presumed that the reference to this officer grew out of the suggestion in the letter of the Commissioner of Pensions, that the second section of the act of the 16th of August, 1841, was virtually repealed by the proviso of the act of 30th April, 1844, which declares, "that no person in the army, navy, or marine corps, shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability for which the pension was granted, be such as to have occasioned his employment in a lower, or some civil branch of the service."

It is a mistake to suppose that the law of 1841 is entirely inoperative; and equally so, that it has been superseded in its application to this case. It often happens in legislation, when there is no repealing clause, that several provisions of law upon the same subject will be found to exist at the same time, as cumulative rules or remedies in no respect inconsistent, and frequently authorizing a wide disparity in the mode of proceeding. Courts have long manifested a disinclination to favor implied repeals, and never suffer the doctrine to prevail beyond the necessary implication, except in cases where there has been a general revision, or the laws upon a particular subject have been embodied, and reduced to a system. The principle, when correctly understood and properly applied, is never extended beyond the inference necessarily arising from some positive inconsistency in the substance of the law. When any two provisions are repugnant, undoubtedly the former is displaced, and must be overruled to the extent of the inconsistency, but no further. These views are sustained by the highest judicial authority. (*Wood vs. United States*, 16 Pet., 362, 363; *Dwarris*, 675; 1 *Kent's Com.*, 466, note.) A slight examination will be sufficient to enable any one to perceive that there is no inconsistency in the two provisions under consideration, in their application to this case. If Congress had adopted the law of 1844 instead of the law of 1841, the effect would have been the same—to withhold the pension from the applicant for and during the period he shall have received his pay as an officer in the service.

I am therefore of opinion that Lieutenant Brownell is not by law to receive his pension while on duty, and in the receipt of his pay as an officer of the navy. The answer to the second question must also be in the negative. In contemplation of this act he is an officer in

the service while in receipt of the pay allowed to his grade, whether on duty or waiting orders. [Opinion of Attorney-General, May 24, 1847.]

This opinion is reversed by the following one, so far as officers on leave, &c., are concerned:—

“The phrase ‘in service’ seems to have been used instead of, and as equivalent to, ‘on duty,’ for, in any other sense, the whole section becomes unmeaning, as every officer, while he continues to belong to the navy, is in the service, though he may not be on duty. Giving this sense to the phrase, I am of opinion—

“First, that no officer can receive at the same time pay as an officer on duty and as a pensioner; and,

“Secondly, that officers who may be ‘waiting orders,’ or ‘on leave,’ or ‘furlough,’ can receive only so much on account of their pensions as, added to their pay when so ‘on leave,’ &c., will amount to the pay of their grade when ‘on duty.’”

That opinion was given on the 20th of August, 1841, and has constituted one of the general regulations of the Pension Office ever since. The intention of Congress should govern the case. It therefore becomes important to ascertain in what sense the language “in service” was employed or recognised in the subsequent acts. The act granting the pension was passed February 18, 1847. It contains no language to overrule the long-established practice of the department, while it expressly adopts and recognises the law upon which it is founded. Whatever doubt, therefore, may exist in my mind as to the soundness of the rule at the time of its promulgation, if it had been originally established by a judicial determination, I should hold that Congress had ratified the interpretation by subsequently re-enacting the phrase upon which it had been made. No rule of construction is better established or more frequently applied. It is thus stated in Bacon’s Abridgment: “Words and phrases, the meaning of which in a statute has been ascertained, when used in a subsequent statute are to be understood in the same sense.” Few exceptions exist to this rule when the words are applied to the same subject-matter. (7 Bacon, stat. I, 451.)

I deem it unnecessary to refer to other authorities which might be cited in support of the position. It will not do, however, to admit that the decision of an executive department can have the same force and effect as a judicial determination. But where there has been an uninterrupted usage of several years, as in this case, founded upon an official opinion, and coupled with a strong implication of legislative sanction, it might be unsafe to overrule the practice without the sanction of Congress.

Under all the circumstances, as they are now disclosed, I see no occasion to recommend any change in the practice of the department. It is better to follow the rule established by Mr. Badger, unless Congress shall see fit to interfere. [Opinion of Attorney-General, June 2, 1847.]

The question is, whether a paymaster can also draw an invalid pension since the act of April 30, 1844. His title to receive his

pension, in addition to his pay, must, therefore, depend upon the question whether his employment is in "some civil branch of the service." The service here spoken of is not "*civil service*" of the government, in its general sense. It is restricted to the military and naval service. The proviso applies only to a "person in the army, navy, or marine corps." His pay, referred to, is "the pay of his rank or station in the service." When, therefore, the exception is introduced of "his employment \* \* in some *civil* branch of the service," it necessarily imports the same service. What, then, is the civil branch of the military service? If there be any such branch as that expressly alluded to, and excepted by Congress, it must comprehend an office, the duties of which are, in their character, altogether civil. Such is the office of paymaster, whose employment is to pay money and keep accounts—whose duty is to deal with pecuniary matters, and whose qualifications are not necessarily military, but civil only. Such a construction, by every rule of law, must be put upon this act, as to give some meaning to these words, and to carry the intention of Congress into effect. And when it is considered that the pension, in this class of cases, is given for a disability incurred in the service of the country, and had been already granted to the pensioner before the act was passed, it would be necessary that a clear intent to take it away should appear before that result can be arrived at by those who are charged with the execution of the law.

[Opinion of Attorney-General, November 1, 1848.]

An act renewing certain naval pensions, and extending the benefits of existing pension laws, respecting naval pensions, to engineers, firemen, and coal-heavers, in the navy, and to their widows.

[Part of SEC. 1.] That the act approved April 30, 1844, shall not be so construed as to exclude officers, seamen, or marines, from their pensions when disabled for sea-service: *Provided*, That the whole amount received by the pensioner, including pay for his service and pension, shall not exceed his lowest duty-pay.

[Approved, August 11, 1848.]

## No. 6.

### *Arrears, to whom payable.*

By a decision of Secretary Paulding, Commodore Porter, in February, 1839, was allowed arrears of pension from 1803 to 1825, which, however, he never drew. After his death his widow claimed them. The decision of Mr. Secretary Paulding, upon the application of Commodore Porter, is in the nature of a judgment rendered by a tribunal of competent *jurisdiction*, which settled the rights of the claimant, and put him upon the footing of an acknowledged creditor, to an ascertained amount, of the government. As such creditor he might at any time during his life have demanded payment, which would not and could not rightfully have been refused him. The fact of his forbearance of that demand does not, I think, extinguish this

debt; but it remains due, and can be discharged only by payment to his legal representatives. I have said legal representatives, because Mrs. Porter, *qua* his widow, has no claim on this fund. In the view I have taken of this case, the sum due is in the precise predicament of any other money to which the Commodore at the period of his death was entitled. It is so much money in the hands of the government to his credit, which belongs, since his death, to his executor, if he has left a will, or to his administrator, if he has died intestate.

With the disposition of the fund the government has nothing to do; that is a matter within the control of the local tribunals charged with the settlement of his estate; the whole extent of the duty and responsibility of the government being to pay over the amount in its keeping to those who represent the deceased, to whom it belonged.

[Opinion of Attorney-General, August 28, 1843.]

SIR: I have the honor to acknowledge the receipt of yours of the 9th ultimo, in which you state that Hamlet Moore, a navy pensioner, died on the 19th of October, 1838; that, under the act of Congress of the 3d of March, 1837, for the more equitable administration of the navy pension fund, he was entitled to arrears of pension from the date of his injury received in the naval service. And my opinion is asked, whether his arrears of pension, not being received by him in his lifetime, shall revert to the navy pension fund, or be paid to his legal representatives?

The second section of the act referred to declares "that the pensions which may have been granted to officers, seamen, and marines in the naval service, disabled by wounds or injuries received while in the line of their duty, shall be considered to commence from the time of their being so disabled," &c.

So soon as this law passed, the pensioner became entitled, in my opinion, to his arrearages of pension, as fully as he was to the pension itself; and although he died without having received what was due to him, still the money does not belong to the navy pension fund, but must be paid over to his legal representatives.

[Opinion of Attorney-General, March 23, 1839.]

The construction of the act of March 3, 1837, upon which this decision was founded, has since been reversed but it leaves the principle in force so far as arrears are concerned.

## No. 7.

### *Pay of Quartermaster of the marines.*

To determine this, it is necessary, in the first place, to ascertain the nature of the appointment held by Captain Weed at the time of his death. He was a quartermaster under the provisions of the act of the 30th of June, 1834, the first section of which enacts that the marine corps shall thereafter consist of one colonel-commandant, one lieutenant-colonel, four majors, thirteen captains, twenty first-lieutenants, twenty second-lieutenants, one adjutant and inspector, one

paymaster, one quartermaster, one assistant-quartermaster, one sergeant-major, &c.

The 6th section of said act provides that the staff of said corps shall be taken from the captains or subalterns of the corps; and the 7th section requires that the appointment of officers, authorized by that act, shall be submitted to the Senate for their advice and consent. It is quite clear, therefore, that Captain Weed, assuming him to have been regularly appointed, was at the time of his death not a captain, discharging the duties of a quartermaster merely, but a quartermaster, nominated, confirmed, and commissioned as such. The next inquiry is, what was the monthly compensation of a quartermaster in the marine corps on the 1st day of January, 1835, the period designated by the act of the 3d of March, 1837, as fixing the amount of the pensions to be allowed under its provisions? The act of the 30th June, 1834, already referred to by its 5th section, declares "that the officers of the marine corps shall be entitled to and receive the same pay, emoluments, and allowances, as are now or may hereafter be allowed to officers of similar grades in the infantry of the army, except the adjutant and inspector." The act of the 2d March, 1821, section 5, provides, in reference to the same grade of infantry of the army, "that there shall be two quartermasters, with the rank, *pay, and emoluments, of majors of cavalry.*" The 2d section of the act of the 12th of April, 1808, prescribes that the pay of majors of cavalry shall be *sixty dollars per month.*

Quartermaster Weed was, therefore, unquestionably entitled, as the law stood on the 1st day of January, 1835, as well as at the period of his death, to compensation at the rate of sixty dollars per month. How was he entitled to it? As a captain discharging the duties of a quartermaster, and receiving the increased allowance for extra services? By no means; but as quartermaster, irrespective of his lineal grade, regularly appointed and commissioned. It was not necessary, under the act of 1834, that the deceased should have held the rank of captain in the line, to render him eligible as quartermaster. The President was equally competent to appoint a subaltern to that station; and, if so appointed, such subaltern would have been alike entitled, as quartermaster, to sixty dollars per month, which could not have been the case had it been the purpose of the law to promise an extra compensation for the service, and not to provide a remuneration for the office. And this design is rendered strikingly apparent by the 7th section of the act of 1821, already quoted; which, whilst it declares that quartermasters shall receive the pay and emoluments of majors of cavalry, provides for ten assistant-quartermasters, who "shall, in addition to their pay in the line, receive a sum not less than ten dollars, nor more than twenty dollars, per month, to be regulated by the Secretary of War."

## No. 3.

## MARINES OF THE MEXICAN WAR.

Joint resolution concerning certain portions of the marine and ordnance corps.

1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the officers, non-commissioned officers, privates, and musicians, of the marine corps, who have served with the army in the war with Mexico, and also the artificers and laborers of the ordnance corps serving in said war, be placed, in all respects as to bounty land and other remuneration, in addition to ordinary pay, on a footing with the officers, non-commissioned officers, privates, and musicians of the army: *Provided*, That this remuneration shall be in lieu of prize money and all other extra allowance.

[Approved, August 10, 1848.]

## DECISIONS.

SIR: I have the honor to reply to your letter of the 10th instant, requesting my opinion in the case of James Orr, a sergeant in the marine corps, who was severely wounded at the storming of Chapultepec, in September, 1847. The question is, whether he is entitled to a pension as a sergeant of marines, under the act of 23d April, 1800, or as a sergeant in the army, under the act of the 26th of April, 1816. In the former case, his pension would be six dollars and fifty cents per month; in the latter, eight dollars per month.

The whole question turns upon the construction of the joint resolution of August 10, 1848, which places those of the marine corps who served with the army in the war with Mexico, "in all respects, as to bounty land and other remuneration in addition to ordinary pay, on a footing with the officers, non-commissioned officers, privates, and musicians of the army."

What is comprehended within the words "other remuneration?" It does not mean ordinary pay, because it is in addition to ordinary pay. It does not mean clothing or rations, for they were the same in both branches of the service. It does not mean "bounty land," for that is expressly named, and then these words are added, meaning remuneration other than bounty land; but, according to the legal rule of construction, of a like nature with it. Bounty land is not strictly remuneration, like pay or emoluments, but a benefit secured by law for the advancement of the service. A pension to a soldier disabled by wounds in battle is a similar benefit, secured by law for a like object; and it is looked to by the soldier, when he engages, as being, in a more broad and general sense, a part of the remuneration which his country promises to secure to him for his services in her cause.

The act of 1816 declares that non-commissioned officers shall be "entitled" to receive, for disabilities of the highest degree, "eight dollars per month"—that is, very clearly, as a remuneration for such

disabilities. This would seem to have been the comprehensive meaning attached to the words "other remuneration," when Congress made use of them. If they have not this meaning, then they have no meaning at all; for there is no other subject-matter to which they can apply; and they must be expunged, as having been used by the Legislature without an object. Besides all this, it was the general intention of Congress to place these classes in all respects upon the same footing; and there is neither reason nor justice, after such a legislative declaration, in making an invidious distinction between two men in the same relative position, who have been disabled, by the loss of their limbs, fighting side by side in the same service. Such was not the intention of Congress.

[Opinion of Attorney-General, November 21, 1848.]

### FORM OF APPLICATION.

#### *To the Commissioner of Pensions:*

The memorial of the undersigned ..... who was a ..... in the United States naval service, respectfully sheweth:—

That your memorialist was born at ..... in the State of .....; is ..... years of age, ..... feet ..... inches high; ..... complexion, ..... eyes, ..... hair.

That he entered the United States naval service at ....., on ..... and while attached to (a) ..... and holding the rank of ..... he was disabled by (b) ..... That the same was incurred by him, in the performance of his duty; and having thereby been disqualified for the naval service, and disabled from obtaining his subsistence by manual labor, he refers to the evidence filed (c) ....., and claims the benefit of the laws granting navy pension ....., and that his pension may be made payable at the navy pension agency.(d)

In the presence of } .....  
 } .....

Sworn and subscribed to, before me ....., on this .....

The memorial should be accompanied by the certificate of the magistrate, or the affidavit of credible witnesses, showing the identity of memorialist.

The official character of the magistrate must in every instance be certified by the clerk of the county under his seal of office.

### APPLICATION FOR INCREASE OF NAVY INVALID PENSION.

County of ..... } ss.  
 ..... }

On this ..... day of ....., 18..., before me, ....., a ....., personally appeared, ....., a resident of ....., who being duly sworn, declareth that he is the same person in whose favor a certificate of pension was issued on the ..... day of ....., 18..., under the signature and seal of the Secretary of the Interior, at the rate of ..... dollars ..... cents per month, from the ..... day of ....., 18..., and which pension has been paid him to the ..... day of ....., 18..., inclusive, at the Navy Pension Agency.

That the disability for which the said pension was allowed was caused by .....

- 
- (a) State whether on board ship or in hospital, and at what place or station.  
 (b) State whether by wounds, injuries received, casualties incurred, or disease contracted.  
 (c) Herewith, or already on file.  
 (d) Insert location of agency.

in the line of his duty, while attached to the United States ....., and holding the rank of ....., in the year 18..., and was graduated for ..... disability from manual labor; but that such disability having since increased, the said ..... for the purpose of obtaining a corresponding increase of his pension, requests that a Board of Survey may be ordered in his case, to be held at the United States Naval Station at .....

Sworn and subscribed to before me, the day and year aforesaid,

The oath to be taken before a duly qualified magistrate, whose official character and signature must be certified by the proper officer, under his seal of office. The County Clerk, Secretary of State, or some other officer, must certify, under his seal of office, that the officer who administered the oath is a Justice of the Peace, Judge, Mayor, Alderman, or Notary Public, as the case may be, and that the signature purporting to be his is genuine.

The oath must be supported by the testimony of some respectable person, as to the pensioner's identity. He must swear that the person who has taken the above oath, is the person described in the affidavit. The magistrate must certify that the witness is a person of veracity; and the affidavit must also be authenticated in the manner above directed.

In every case where the Clerk of the Court, or other certifying officer, has no public seal of office, the certificate of a member of Congress, proving the official character and signature of the certifying officer, should be sent with the papers.

#### *Mode of authenticating papers.*

In every instance where the certificate of the certifying officer who authenticates the papers is not written on the same sheet which contains the affidavit, or other paper authenticated, the certificate must be attached thereto by a piece of tape or small ribbon, the ends of which must pass under the seal of office of the certifying officer so as to prevent any paper from being improperly attached to the certificate.



## PART V.

### NAVY AND MARINE WIDOWS' AND ORPHANS' PENSION.

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No. 1.

#### ACT OF JANUARY 20, 1813, AND CONTINUATION.

An act providing navy pensions in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That, if any officer of the navy or marines shall be killed or die, by reason of a wound received in the line of his duty, leaving a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, which allowance shall continue for and during the term of five years; but in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay for the remainder shall go to the child or children of the said deceased officer: *Provided,* That such half pay shall cease on the death of such child or children; and the money required for this purpose shall be paid out of the navy pension fund, under the direction of the commissioners of that fund. [Approved, January 20, 1813.]

An act extending the term of half pay pensions to the widows and children of certain officers, seamen, and marines, who died in the public service.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle, or died of wounds received in battle, or who died in the naval service of the United States, during the late war, the said provision shall be continued for the additional term of five years, to commence at the end of the first term of five years, in each case,

respectively, making the provision equal to ten years' half pay; which shall be paid in the manner, and out of the fund, heretofore designated by law; and the said pensions shall also cease for the reasons mentioned in the said law. [Approved, March 3, 1819.]

An act further extending the term of half pay pensions to the widows and children of officers, seamen, and marines, who died in the public service.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines who were killed in battle, and who died in the naval service of the United States, during the late war; and, also, in all cases where provision has been made for extending the term for five years, in addition to the first term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the second term of five years, in each case, respectively, making the provision equal to fifteen years' half pay; which shall be paid out of the fund heretofore provided by law; and the said pensions shall cease, for the causes mentioned in the laws providing the same, respectively. [Approved, January 22, 1824.]

An act to provide for extending the term of certain pensions, chargeable on the Navy and Privateer Pension Fund.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for the five years' half pay to the widows and children of officers, seamen, and marines who were killed in battle, or who died in the naval service of the United States during the last war; and also in all cases where provision has been made for extending the term for five years in addition to any term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the current or last expired term of five years in each case, respectively; making the provision equal to twenty years' half pay; which shall be paid out of the fund heretofore provided by law, and the said pensions shall cease for the causes mentioned in the laws providing the same, respectively. [Approved, May 23, 1828.]

These acts are continued, so far as regards widows only, by the following:—

An act further to extend the pensions heretofore granted to the widows of persons killed or who died in the naval service.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for the five years' half pay to widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the

United States; and, also, in all cases where provision has been made for extending the term for five years, in addition to any term of five years, the said provision shall be, and is hereby, further extended for an additional term of five years, so far as respects widows only, to commence at the end of the current or last expired term of five years in each case, respectively; which pension shall be paid out of the fund heretofore provided by law. And the pension herein continued shall cease for the causes mentioned in the laws granting the same, respectively.

[Approved, June 28, 1832.]

An act concerning naval pensions, and the Navy Pension Fund.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the provisions and benefits of the act of the twenty-eighth of June, one thousand eight hundred and thirty-two, entitled "An act further to extend the pension heretofore granted to the widows of persons killed, and who have died in the naval service," be continued for another term of five years to all those widows who have heretofore had the benefit of the same; and the same are hereby also extended to the widows of officers, seamen, and marines, who have died in the naval service since the first day of January, one thousand eight hundred and twenty-four, or who may die in said service by reason of disease contracted, or of casualties by drowning or otherwise, or of injuries received while in the line of their duty; and the pensions of such widows shall commence from the passage of this act: *Provided*, That every pension hereby granted shall cease on the death or marriage of such widow.

[Approved, June 30, 1834.]

An act renewing certain naval pensions for the term of five years.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the pensions for the period of five years, which have been heretofore granted out of the Naval Pension Fund, to the widows of officers, seamen, and marines, who have been killed, or died by reason of a wound received in the line of their duty, or who have died by occasion of disease contracted, or of a casualty by drowning or otherwise, or of injury received while in the line of their duty, and which pensions have ceased in consequence of the expiration of the period for which they were originally granted, or for which they were subsequently renewed, shall be continued for another period of five years, to such of the said widows as have remained unmarried; to commence from the day on which such pensions, respectively, terminated; and to be paid out of any money in the Treasury not otherwise appropriated: *Provided*, That every pension hereby renewed shall cease on the death or intermarriage of the widow to whom the same is hereby granted.

[Approved, March 3, 1845.]

An act making appropriations for the payment of navy pensions for the year ending thirtieth June, eighteen hundred and forty-eight.

SEC. 2. *And be it further enacted*, That the provisions of the act of 1845, chapter 41, entitled "An act renewing certain naval pensions for the term of five years," be, and the same are hereby, extended to all pensions of similar kind which have expired since the passage of said act; and the pensions which were renewed by the said act for the term of five years, and which may expire before the next session of Congress, shall be, and hereby are renewed and continued for another term of five years, to the persons entitled thereto, in the same manner, and subject to the same conditions, as are in the said act contained, and to commence from the time they may severally expire, and to be paid out of any money in the Treasury not otherwise appropriated. [Approved, March 3, 1847.]

The following act again admits orphans as well as widows:—

An act renewing certain naval pensions, and extending the benefits of existing laws, respecting naval pensions, to engineers, firemen, and coal-heavers in the navy, and to their widows.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all those widows and such child or children, as are now receiving a pension under any of the laws of Congress passed prior to the first of August, eighteen hundred and forty-one, (excepting the law passed the third of March, eighteen hundred and thirty-seven,) and those widows and children who have received pensions at any time within five years prior to the passage of this act, may and shall continue to receive the same amount as they have received under any special act, from the time such special act expired: *Provided*, Such act ceased on or after the first day of September, eighteen hundred and forty-five, or may hereafter terminate. And all such pensions as are now in force, and such as are now renewed by this act, shall be paid out of any money in the Treasury not otherwise appropriated, so long as the said widows shall live as widows; and in case of the death, before or after the passage of this act, of the widows, to the orphan child or children of the deceased parties, until they respectively arrive at the age of sixteen years; and to the child or children of said widows in case of marriage by said widows, until said child or children shall respectively arrive at the age of sixteen years. \* \* \* That the orphan child or children of the deceased parties shall have a pension in case the widow has died after receiving a five years' pension, to commence at the time when the widow dies, and to continue until the child or children shall respectively reach the age of sixteen years. \* \* \* \* [Approved, August 11, 1848.]

## No. 2.

## ACT OF MARCH 4, 1814, AND CONTINUATIONS.

An act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States.

SEC. 2. *And be it further enacted*, That if any seaman or marine belonging to the navy of the United States shall die, or if any officer, seaman, or marine, belonging to the navy of the United States shall have died, since the eighteenth day of June, in the year of our Lord one thousand eight hundred and twelve, by reason of a wound received in the line of his duty, leaving a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, which allowance shall continue for the term of five years; but in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay, for the remainder of the term, shall go to the child or children of the deceased: *Provided*, That such half pay shall cease on the death of such child or children. And the money required for this purpose shall be paid out of the Navy Pension Fund, under the direction of the Commissioners of that fund.

[Approved, March 4, 1814.]

An act in addition to "An act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in every case where a person has been put on the pension list, or granted a certificate of pension, by virtue of the first section of an act passed the fourth day of March, in the year eighteen hundred and fourteen, entitled "An act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States," the Secretary of the Navy be, and he is hereby, authorized, at the expiration of the term of five years, for which any pension certificate shall have been granted as aforesaid, to allow the full monthly pension to which the rank of the deceased would have entitled him for the highest rate of disability, and that such pension shall continue to such person for the further term of five years: *Provided*, That such pension shall cease on the death of such widow, child or children.

[Approved, April 16, 1818.]

An act extending the term of half pay pensions to the widows and children of certain officers, seamen, and marines, who died in the public service.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all

cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle or died of wounds received in battle, or who died in the naval service of the United States, during the late war, the said provision shall be continued for the additional term of five years, to commence at the end of the first term of five years, in each case respectively, making the provision equal to ten years' half pay; which shall be paid in the manner, and out of the fund, heretofore designated by law; and the said pensions shall also cease for the reasons mentioned in the said law. [Approved, March 3, 1819.]

An act further extending the term of half pay pensions to the widows and children of officers, seamen, and marines, who died in the public service.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States, during the late war; and, also, in all cases where provision has been made for extending the term for five years, in addition to the first term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the second term of five years, in each case respectively, making the provision equal to fifteen years' half pay; which shall be paid out of the fund heretofore provided by law; and the said pensions shall cease, for the causes mentioned in the laws providing the same, respectively. [Approved, January 22, 1824.]

An act to provide for extending the term of certain pensions, chargeable on the Navy and Privateer Pension Fund.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for the five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States during the last war; and also in all cases where provision has been made for extending the term for five years in addition to any term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the current or last expired term of five years in each case respectively; making the provision equal to twenty years' half pay; which shall be paid out of the fund heretofore provided by law, and the said pensions shall cease for the causes mentioned in the laws providing the same, respectively. [Approved, May 23, 1828.]

These acts were continued, so far only as widows are concerned, by the acts of June 28, 1832; June 30, 1834; March 3, 1845; March 3, 1847; and by the act of August 11, 1848, both to widows and orphans — for all which acts see the preceding title.

No 3.

ACT OF MARCH 3, 1817, AND CONTINUATIONS.

An act to amend and explain an "Act giving pensions to the widows and orphans of persons slain in the public or private armed vessels of the United States."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any officer, seaman, or marine, belonging to the Navy of the United States, shall die, or shall have died, since the eighteenth day of June, in the year of our Lord one thousand eight hundred and twelve, in consequence of disease contracted, or of casualties or injuries received, while in the line of his duty, and which shall be satisfactorily proved to the commissioners of the navy pension fund, leaving a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, which allowance shall continue for the term of five years; but in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay, for the remainder of the term, shall go to the child or children of the deceased: *Provided,* That such half pay shall cease on the death of such child or children. And the money required for this purpose shall be paid out of the navy pension fund, under the direction of the commissioners of that fund.

[Approved, March 3, 1817.]

An act extending the term of half pay pensions to the widows and children of certain officers, seamen, and marines, who died in the public service.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle or died of wounds received in battle, or who died in the naval service of the United States, during the late war, the said provision shall be continued for the additional term of five years, to commence at the end of the first term of five years, in each case, respectively, making the provision equal to ten years' half pay; which shall be paid in the manner, and out of the fund, heretofore designated by law; and the said pensions shall also cease for the reasons mentioned in the said law.

[Approved, March 3, 1819.]

An act further extending the term of half pay pensions to the widows and children of officers, seamen, and marines, who died in the public service.

SEC. 2. *And be it further enacted,* That, from and after the passing of this act, the act entitled "An act to amend and explain an act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States," passed March

the third, one thousand eight hundred and seventeen, be, and the same is hereby, repealed: *Provided, however,* That nothing in this act contained shall be construed to prevent the payment of any pension already granted, until the full expiration of the period thereof; nor to affect or impair the rights of any person or persons which may have accrued during the existence of the act hereby repealed, as aforesaid. [Approved, January 22, 1824.]

Although the acts of March 3, 1817, and March 3, 1819, are repealed by the act of January 22, 1824, yet any rights which accrued under them are saved, and it may be that parties are now in existence who have a right to their benefits.

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No. 4.

## ACT OF MARCH 3, 1837, AND CONTINUATIONS.

An act for the more equitable administration of the navy pension fund.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any officer, seaman, or marine, have died, or may hereafter die, in the naval service, leaving a widow, and, if no widow, a child or children, such widow, and if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased would have been entitled, under the acts regulating the pay of the navy, in force on the first day of January, one thousand eight hundred and thirty-five, to commence from the time of the death of such officer, seaman, or marine; but in case of the death or intermarriage of such widow, the half pay shall go to the child or children of deceased officer, seaman, or marine: *Provided,* That the half pay granted to the child or children shall cease on their death, or on their attaining the age of twenty-one years. [Approved, March 3, 1837.]

An act to provide for the payment of navy pensions.

SEC. 1. \* \* \* \* \* *Provided,* That all widows or children of all naval officers, seamen, or marines, now deceased, and entitled to receive or make proof of their pensions under the act of the third of March, eighteen hundred and thirty-seven, shall receive the same until the close of the next session of Congress; but no widow or children of any naval officer, seaman, or marine, who may hereafter die, shall be entitled to any pension by virtue only of any provision in the said act. [Approved, August 16, 1841.]

An act making an appropriation to supply a deficiency in the navy pension fund.

SEC. 2. *And be it further enacted,* That the act entitled "An act to provide for the more equitable administration of the navy pension fund," approved March third, eighteen hundred and thirty-seven, be, and the same is hereby, repealed, from and after the first day of July, eighteen hundred and forty-two. [Approved, August 23, 1848.]



## No. 5.

## ACT OF AUGUST 11, 1848.

An act renewing certain naval pensions, and extending the benefits of existing laws, respecting naval pensions, to engineers, firemen, and coal-heavers in the navy, and to their widows.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all those widows and such child or children as are now receiving a pension under any of the laws of Congress passed prior to the first of August, eighteen hundred and forty-one, (excepting the law passed the third of March, eighteen hundred and thirty-seven,) and those widows and children who have received pensions at any time within five years prior to the passage of this act, may and shall continue to receive the same amount as they have received under any special act, from the time such special act expired: *Provided,* Such act ceased on or after the first day of September, eighteen hundred and forty-five, or may hereafter terminate. And all such pensions as are now in force, and such as are now renewed by this act, shall be paid out of any money in the treasury not otherwise appropriated, so long as the said widows shall live as widows; and in case of the death, before or after the passage of this act, of the widows, to the orphan child or children of the deceased parties, until they respectively arrive at the age of sixteen years; and to the child or children of said widows in case of marriage by said widows, until said child or children shall respectively arrive at the age of sixteen years; and that the act approved thirtieth April, eighteen hundred and forty-four, shall not be so construed as to exclude officers, seamen, or marines, from their pensions, when disabled for sea service: *Provided,* That the whole amount received by the pensioner, including pay for his service and pension, shall not exceed his lowest duty pay. That the orphan child or children of the deceased parties shall have a pension in case the widow has died after drawing a five years' pension, to commence at the time when the widow dies, and to continue until the child or children shall respectively reach the age of sixteen years; and that any casualty by which an officer, seaman, or marine, has lost or may lose his life while in the line of his duty, shall be considered sufficient to entitle the widow, child, or children, to all the benefits of this act.

SEC. 2. *And be it further enacted,* That engineers, firemen, and coal-heavers, in the navy, shall be entitled to pensions in the same manner as officers, seamen, and marines; and the widows of engineers, coal-heavers, and firemen, in the same manner as the widows of officers, seamen, and marines: *Provided,* That the pension of a chief engineer shall be the same as that of a lieutenant in the navy; and a pension of the widow of a chief engineer the same as that of the widow of a lieutenant in the navy; the pension of a first assistant engineer the same as that of a lieutenant of marines; and the pen-

sion of the widow of a first assistant engineer the same as that of the widow of a lieutenant of marines; the pension of a second or third assistant engineer the same as that of a forward officer; and the pension of the widow of a second or third assistant engineer the same as that of the widow of a forward officer; the pension of a fireman or coal-heaver the same as that of a seaman; the pension of the widow of a fireman or coal-heaver the same as that of the widow of a seaman: *And provided further*, That an engineer, fireman, or coal-heaver, shall not be entitled to any pension by reason of a disability incurred prior to the thirty-first of August, eighteen hundred and forty-two, nor shall the widow of an engineer, fireman, or coal-heaver, be entitled to any pension by reason of the death of her husband, if his death was prior to the said date.

SEC. 3. *And be it further enacted*, That the amount of pension in every case arising under this law [is] not to exceed the half pay of the deceased officer, seaman, or marine, as it existed in January, eighteen hundred and thirty-five, or such rate of pension as is allowed by this act.

[Approved, August 11, 1848.]

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## NAVY AND MARINE WIDOWS' PENSION ACTS.

### No. 1.

#### ACT OF JUNE 28, 1832, AND CONTINUATIONS.

An act further to extend the pensions heretofore granted to the widows of persons killed, or who died in the naval service.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases where provision has been made by law, for the five years' half pay to widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States; and, also, in all cases where provision has been made for extending the term for five years, in addition to any term of five years, the said provision shall be, and is hereby, further extended for an additional term of five years, so far as respects widows only, to commence at the end of the current or last expired term of five years in each case, respectively; which pension shall be paid out of the fund heretofore provided by law. And the pension herein continued shall cease for the causes mentioned in the laws granting the same, respectively.

SEC. 2. *And be it further enacted*, That the provisions of this act shall be extended to the widows of all those who may have died by reason of wounds received during the war. [Approved, June 28, 1832.]

An act concerning naval pensions, and the navy pension fund.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the provisions and benefits of the act of the twenty-eighth of June, one thousand eight hundred and thirty-two, entitled "An act further to extend the pension heretofore granted to the widows of persons killed, and who have died in the naval service," be continued for another term of five years to all those widows who have heretofore had the benefit of the same. [Approved, June 30, 1834.]

This act is further continued by the acts of March 3, 1845; March 3, 1847; and August 11, 1848; which have been heretofore given, under the act of January 20, 1813.

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No. 2.

ACT OF JUNE 30, 1834.

An act concerning naval pensions, and the navy pension fund.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the provisions and benefits of the act of the twenty-eighth of June, one thousand eight hundred and thirty-two, entitled "An act further to extend the pension heretofore granted to the widows of persons killed, and who have died in the naval service," be continued for another term of five years to all those widows who have heretofore had the benefit of the same; and the same are hereby also extended to the widows of officers, seamen, and marines, who have died in the naval service since the first day of January, one thousand eight hundred and twenty-four, or who may die in said service by reason of disease contracted, or of casualties by drowning or otherwise, or of injuries received while in the line of their duty; and the pensions of such widows shall commence from the passage of this act: *Provided*, That every pension hereby granted shall cease on the death or marriage of such widow. [Approved, June 30, 1834.]

The provisions of this act were further continued by the acts of March 3, 1845; March 3, 1847; and August 11, 1848, heretofore given, by which latter act orphans are again included.

ACTS IN SPECIAL CASES.

No. 1.

DARTMOOR PRISONERS.

An act placing certain persons on the list of navy pensioners.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Navy be, and he is hereby, authorized and required to place on the list of navy pensioners, those persons who were wounded at Dartmoor prison, in England, in the month of April, one thousand eight hundred and fifteen; also, the widows and children of such as were killed, or who died in consequence of wounds received there; and that, in the allowance of pensions to the persons aforesaid, the regulations established by law, in relation to the placing persons on the list of navy pensioners, be observed.

SEC. 3. *And be it further enacted,* That this act shall be construed to take effect from the sixth day of April, in the year one thousand eight hundred and fifteen.

[Approved, April 2, 1816.]

No. 2.

THE GRAMPUS.

An act for the relief of the widows and orphans of the officers, seamen, and marines, of the United States' schooner Grampus, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That for the purpose of fixing the time at which shall commence the pensions, under the existing laws, of the widows of the officers, seamen, and marines, who were lost in the United States schooner Grampus, as well as the time to which the pay of said officers, seamen, and marines, shall be allowed, the twentieth day of March, one thousand eight hundred and forty-three, shall be deemed and taken to be the day on which the said schooner Grampus foundered at sea; and that, for the like purposes, the first day of May, one thousand eight hundred and thirty-nine, shall be deemed and taken to be the day on which the United States' schooner Sea Gull was lost in like manner.

SEC. 2. *And be it further enacted,* That if any of the said officers, seamen, or marines, shall have left no widow, or having left a widow, she shall have died before the passage of this act, and there shall be living at the date of the passage of this act a child or children of said officers, seamen, or marines, under sixteen years of age, such child or children shall be entitled to the same pension to which the widow, had there been one as aforesaid, would have been entitled, for the like period of five years; but in case of the death or intermarriage of the widow before the expiration of the said term of five years, the said pension for the remainder of the said term shall go to the

child or children of the said deceased officer, seaman, or marine : *Provided*, That such pension shall cease upon the death of such child or children.

SEC. 3. *And be it further enacted*, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to settle the accounts of James S. Thacher, late purser in the navy, who was lost in said schooner *Grampus*, with all his accounts and vouchers for expenditures and payments made by him, and with all the money, stores, and supplies, procured for the use of said vessel, and to allow him a credit for whatever sum appears to be due from him on the books of the department.

[Approved, June 15, 1844.]

PRINCIPLES AND DECISIONS.

No. 1.

Over-payments, when to be retained.

Assuming that the pension of Mrs. Gardner ought not to have been continued under the acts of 1819 and 1824, it does not follow that she is to be regarded as a debtor to the government for the amount received under these two acts. On the contrary, I think that, inasmuch as the tribunal to whom the construction of these laws was confided by the government decided that Mrs. Gardner was embraced by their provisions, and the pension was paid to her under that decision, she is entitled to hold the money. The interpretation then given by the competent authority having jurisdiction of the subject cannot now be revised or reversed by their successors in the same office, so as to affect the rights of those who have received pensions, although the construction then given should now be deemed erroneous. The case would be different if any mistake of fact had been committed, or the government imposed on by false testimony.

The act of the last session of Congress in relation to these pensions, conforms in its language to the act of 1817; and Mrs. Gardner is entitled to a pension under this law. Being so entitled, she has, in my opinion, the right to receive her pension; and the money which was paid to her under the laws of 1819 and 1824 cannot be set off against it. She is not debtor to the public for what she has before received under the decision of the tribunal established by the government to decide on her rights; and that sum cannot, therefore, be retained as a set-off against the money which, under the late law, is due to her from the public.

[Opinion of Attorney-General, October 24, 1832.]

The act for the relief of the widows and orphans of the officers, seamen, and marines of the sloop-of-war *Hornet*, fixes the 10th day of September last as the day up to which their arrears of pay should be calculated. Any moneys advanced for pay supposed to have accrued after that period, were advanced by mistake, and may be recovered. The same act gives to the widows, children, parents, &c., a sum equal to six months' pay of their respective deceased relatives.

Where over-pay has been advanced to the same parties entitled to this bounty, they are both debtors and creditors to the United States. In such cases, the right of retainer, by deducting the amount advanced, would seem to be allowable. But when the money was advanced to a person other than the one entitled under the provisions of the act to the bounty which it allows, such deduction cannot be permitted. Even against the right of retainer in the first place, it may be urged that Congress has provided expressly for the exercise of this right in certain cases, not including that under consideration; but it seems to me that these provisions may be considered as directory, and for the enforcement of a principle of retainer which exists independently of them.

[Opinion of Attorney-General, June 4, 1830.]

No. 2.

Pension claim is a vested right.

The case and question submitted for my opinion are the following: "During the late war a person lost his life on board a private armed vessel, while acting in the line of his duty, leaving a widow, and children under the age of sixteen years. By the acts of Congress on the subject of pensions, the widow was entitled to a monthly allowance from the privateer pension fund. She omitted, however, preferring any claim for several years; but now, having intermarried, she has applied for the pension on behalf of the children, some of whom are yet under the age of sixteen years, and also for the portion of pension to which she was entitled during her widowhood.

"*Question.*—Is the applicant, having ceased to be the widow, legally entitled to receive a pension for the interval between the death of her former husband and her second marriage?"

Here is a certain right which the law says shall accrue to the widow on the happening of a certain event—that of her husband having died by reason of a wound received in the line of his duty on board of a private armed vessel. The law does not require either that an application should be made by her, or that anything else should be done in order to consummate her right. It is consummated by the mere fact of the death of her husband under the circumstances already mentioned. It is a vested right to so much money *per annum*, for five years, subject, however, to be discontinued and defeated by her death or marriage at any time within that term, but a vested and perfect right during the time that she continues to live the widow of her deceased husband; and not defeated by her subsequent intermarriage, except from the time at which such intermarriage takes place.

[Opinion of Attorney-General, June 9, 1825.]

A woman after her marriage, or rather her husband in her right, may receive that portion of the pension which grew due during her widowhood; but all the laws discontinue the pension on her marriage.

[Opinion of Attorney-General, July 22, 1828.]

Although the observations made by the Attorney-General in his opinion of June 9, 1825 [*supra*], were made in reference to a case arising under the 1st section of the act of 1814 (which section relates to *private armed ships*), the principle laid down by the Attorney-General is equally applicable to other cases.

He also says that the right of pension does not depend on the *necessities* of the parties. "It is given to the widows and children of officers and men, of rich and poor, without regard to their circumstances. It is in the nature of an absolute engagement or promise made to those officers and men, that if they fall in the service of their country, so much shall be paid to their wives and children, without inquiry into the fact whether they stand in need of it or not. Nor is there any condition annexed to the promise, that the money shall be paid *if applied for in a given time, or in a given state of things*. It is bottomed only on the single condition that the husband and father shall die in the service of his country; on the happening of which condition, the public engagement becomes a *debt*, which is as much *property*, and the property of the widow and children, as any bond which the deceased may have left to them by his will."

[Opinion of Attorney-General, April 5, 1836.]

No. 3.

Children, how long entitled,

The uniform practice, I understand, has been to discontinue the pension after the child had reached the age of sixteen; and although the laws do not expressly declare that it shall be so, yet the manifest policy and reason of the provision, and the uniformity of the limit of sixteen years in every act, would seem to justify the construction which has thus practically been put upon the laws, as giving the sense of Congress. [Ib.]

No. 4.

Half blood.

The civil law of the Roman empire admitted the half blood to an equal participation in the inheritance with the whole blood, prior to the novel ordinance of Justinian, which allowed them to inherit only on failure of whole blood. The half blood is entirely excluded by the law of England; but this is the result of an extremely artificial rule of evidence.

This English rule of evidence is inapplicable to the condition of things in the United States, and the principle which flows from it has, consequently, been disregarded. As, however, the regulation of descent belong to the different States, the legislation on this subject is various and conflicting. The tendency of legislation in the different States has been, to restore the half blood to the rights from which they were excluded by the civil law and by the law of England.

The fund to be distributed is a bounty of the government, awarded for faithful service, and for the sacrifice of life in the discharge of public duty. The collateral relatives of the half blood are, in my opinion, entitled to participate equally with those of the whole blood.

[Opinion of Attorney-General, November 19, 1830.]

No. 5.

Rate of pension.

The law takes the half pay of the deceased officer, seaman, or marine, as the measure of his pension, so that twenty years' pension cannot exceed twenty years' half pay.

[Opinion of Attorney-General, July 22, 1828.]

The act of March 3d, 1817, provides, that if any officer belonging to the navy of the United States shall die in consequence of disease contracted, or of casualties or injuries received, while in the line of his duty, &c., leaving a widow, such widow shall be entitled to receive "*half the monthly pay to which the deceased was entitled at the time of his death,*" to continue for the term of five years, &c.

This law must undoubtedly be regarded as furnishing the general rule by which the rights of Mrs. Henley are to be settled; and although we are obliged to refer to other laws regulating the pay of officers of the navy, yet, so long as such pay was made by the *month*, no difficulty could arise in its application. Even where the monthly pay may have been increased since 1817, the principle would be the same; the language of the act of 1817 being such as to accommodate itself to the monthly pay, whatever it may have been, to which the deceased officer was entitled at the time of his death.

Until the enactment of the late act "to regulate the pay of the navy of the United States," passed March 3d, 1835, captains in the navy were paid at the rate of one hundred dollars per month when commanding ships of thirty-two guns and upwards. Commodore Henley's case would have been governed by this law, had it not been for the new provision inserted in the act of 1835, which virtually repeals all former laws on the subject, and adopts the principle of *annual* instead of *monthly* pay; fixing that of captains in command of squadrons on foreign stations at four thousand dollars. To this annual pay Commodore Henley, as I understand, was entitled at the time of his death; and it is therefore urged, in behalf of his widow, that she is entitled, under the act of 1817, to the one-half of this sum per year, or the twelfth part of it per month, as her pension. On the other hand, the Secretary of the Navy is of opinion that the act of 1835 was passed without any reference to pensions, and has decided that, until Congress otherwise direct, pensions must be granted according to the *monthly* pay to which the officer was entitled, by law, at the time when the act granting such pensions was passed. It is upon this decision, from which Mrs. Henley has appealed to the President, that my opinion is required.

It may be admitted as highly probable that the act of 1835 was framed without any special regard to the pension law, and that its effect was not considered by Congress; but I cannot entirely subscribe to the opinion that pensions are to be limited to one-half the monthly pay established by the former laws. I think it very certain that Congress, in passing the act of 1835, intended to raise the *pay proper* to naval officers; and, so far as this was intended to be done, it appears to me it ought to produce a corresponding increase of the pension. The mere fact that the pay, instead of being fixed at a monthly sum, is to be paid quarterly or annually, and that it is spoken of as *annual* pay, does not, in my judgment, prevent the application of the rule given by the law of 1817, provided it be practicable to ascertain the precise amount of *pay proper* given by the new law. The pension law of 1817 seems to have been framed with a view to meet the case of an increase in the monthly pay, as well as of differences in the amount to which the officer may be entitled, arising from other circumstances; and therefore expressly provides that the pension shall be, not "one-half of the monthly pay given and established by the laws now in force" (which is the construction adopted by the Secretary of the Navy), but "one-half the monthly pay to which the deceased *was entitled at the time of his death.*" We are, therefore, as it seems to me, obliged to resort to the law of 1835, by which Commodore Henley's pay was regulated and fixed at the time of his death; and are not at liberty to take the amount fixed by the former law, which, as already observed, is repealed by the act of last session.

But I am by no means prepared to say that the widow is entitled to one-half the gross sum prescribed by the act of 1835. It is obvious, from the history of this law, and from its provisions, that Congress intended to include in the gross sum fixed by it, not only a certain amount of *pay proper*, (considerably increased beyond the monthly pay given by the former law,) but also to embrace an allowance for all the *rations* but one, and for sundry other *perquisites*. And as the pension laws have never been so framed as to give any part of those rations and perquisites to the widow or children of the officer, but, on the contrary, are carefully limited to one-half of the *pay proper*, I think the pension to be allowed to Mrs. Henley ought to be confined to one-half of so much of the annual sum of four thousand dollars as may be found to be referable to *pay proper*. The rations, (over one ration per day,) and the other perquisites, to which an officer in the situation of Commodore Henley at the time of his death would have been entitled under the laws in force on the second of March, 1835, must be deducted from the sum of four thousand dollars; and the one-half of the residue, after such deduction, will, in my opinion, be the proper annual pension to be allowed to Mrs. Henley.

[Opinion of Attorney-General, July 20, 1835.]

The act of 1835 allows one ration per day, besides the annual pay; but all the rations allowed by previous acts are merged in the gross sum given for annual pay, and should therefore be deducted, together

with the other perquisites so merged, in order to ascertain what was really intended to be allowed for pay proper.

[Opinion of Attorney-General, August 17, 1835.]

Mrs. Coxe now claims the same pension to which she would have been entitled had her husband been actually appointed a lieutenant before his death, on the ground that he had been acting as lieutenant, and in that capacity had rendered very meritorious services; and on the ground, also, that he had been nominated by the President to the Senate for promotion to a lieutenantcy; and which nomination would undoubtedly have been confirmed, had he not died before the action of the Senate could be had thereon.

The question for my opinion is, whether she is to receive a pension on account of her deceased husband as a midshipman or lieutenant? My opinion is, that his acting as lieutenant, and his being nominated by the President for promotion, could not change his rank until the confirmation of the Senate. This confirmation was prevented by his death. He died a midshipman, and his widow must receive a pension accordingly.

[Opinion of Attorney-General, April 27, 1839.]

The monthly pay on the 1st January, 1835, governs the rate of pension, and not the increased annual pay given by the act of March 3, 1835.

[Secretary of the Interior, case of Sarah Mersereau.]

This decision, made by the present Secretary, overturns the one made by the Attorney-General, on the 20th July, 1835, given above.

No. 6.

Arrears, to whom payable.

The case stated in your letter of the 26th January is as follows:—
“During the late war with England, an individual was killed on board of a private armed vessel of the United States, in an action with a British ship. His widow did not apply for a pension. She married again; but the second husband, during her life, did not prefer the claim. After her death, he demanded the pension from the date of the first husband's death to the time of the second marriage. The woman had no children.”

On this case you inquire — 1st, Whether a pension shall be paid? and, if so, 2d, Who is the proper person to receive it?

The opinion of the Attorney-General dated the 9th of June, 1825, and transmitted on that day to the Secretary of the Navy, settles the first of these questions in the *affirmative*.

Your second question must be solved by applying to the present case the rules of law in regard to the right of the husband in the property of his wife, in force in the State where the parties resided at the time of his wife's death. By the law of England, the husband, if he survives his wife, is entitled to administer on her estate, and to recover all debts due to her at the time of marriage, and all her other outstanding choses in action, for his own use, subject only to his liability for debts contracted by her whilst a *femme sole*, to the extent of the assets received by him. This is the general rule in the

American States; though in Maryland, and perhaps in some other States, the husband has been relieved from the necessity of taking out letters of administration.

[Opinion of Attorney-General, April 5, 1835.]

To entitle a woman, as the *widow* of an officer, seaman, or marine, to the pension given by the law, she must have remained in a state of widowhood. The party serving must die *leaving a widow*; and it is "*such widow*" — that is, *the widow left by the decedent*, and the widow of the decedent — who is entitled. Mrs. Timberlake, having remarried, can therefore claim no benefit under the act.

Where the decedent has left a widow and children, and the former has married before the passage of the act, the children, within the equity of the law, and by a liberal construction of its provisions, are entitled to its benefits. I am accordingly of opinion that the children of Purser Timberlake are entitled to the half pay granted by the first section of the act, from the death of their father, to cease on their death, or on their attaining the age of twenty-one years.

[Opinion of Attorney-General, April 7, 1837.]

I have the honor to inform you, that, as Mrs. Murray died before the passage of the act under which the claim is made, I am of opinion no right to any of the benefits granted by that law was vested in her, to be passed to her representative. In similar cases arising under the general pension law of the fourth of July, 1836, I had occasion to adopt this principle; and, though many considerations may well be urged in favor of extending the law so as to reach these cases, yet it is only to Congress that they can properly be addressed.

[Opinion of Attorney-General, April 11, 1837.]

I have the honor to inform you, that if (as I understand is the fact) the steward serving on board a ship-of-war is borne on the ship's books as one of the crew, and is amenable to martial law, I think he must be regarded as a *scaman*, within the pension laws, so as to entitle his widow to a pension. In the particulars stated, such a case is entirely distinguishable from that of the *hospital* steward to which you refer.

[Opinion of Attorney-General, November 18, 1837.]

So soon as this law passed, the pensioner became entitled, in my opinion, to his arrearages of pension, as fully as he was to the pension itself; and although he died without having received what was due to him, still the money does not belong to the Navy Pension Fund, but must be paid over to his legal representatives.

[Opinion of Attorney-General, March 23, 1839.]

No. 7.

Special acts.

It is very possible that the Congress which passed the act of March 2, 1821, (a special act in Mrs. Perry's favor,) may, in point of fact, have been ignorant of the act of March 3, 1817, and of the rights of Mrs. Perry under it. But the legal presumption is directly

the reverse; and as there is nothing in the act of 1821 to exclude Mrs. Perry from the benefits of the former law, or to limit her in the enjoyment of the rights vested in her thereby, I do not see upon what principle it can now be done. I am accordingly of opinion that the act of 1821 is to be regarded as a grant to her and her family, over and above her pension under the act of 1817.

[Opinion of Attorney-General, November 3, 1836.]

It is assumed, in your statement of the case, that Mrs. Decatur would be entitled to the pension granted by the act of the third ultimo, "for the more equitable administration of the Navy Pension Fund," were it not for the doubt created by the passage, on the same day, of the joint resolution for her special benefit. And, on these two laws, you inquire whether she is entitled under the resolution, or under the act, or under both?

This case differs from that of Mrs. Perry, referred to in the note of Mrs. Decatur, accompanying your letter, inasmuch as the law under which Mrs. Perry ultimately obtained her pension was in existence at the time of his death; at which time she was also entitled (although not aware of the fact) to its benefits. I held, in her case, that the law granting her *annuity* (for such it was called) could not deprive her of a pension given by a pre-existing law; and that, as Congress were presumed to be acquainted with the laws in force, the legal intentment must be that the annuity was designed as an additional provision, and, consequently, that she was entitled to both.

After maturely considering the history of the general and special provisions on which the present case depends, I am of opinion that but *one* pension can be allowed; but if the general provision includes the case of Mrs. Decatur, then I am of opinion she is entitled to take under that provision, or under the joint resolution, at her election.

[Opinion of Attorney-General, April 11, 1837.]

One entitled to a pension, both under a general law and a special act, must elect between them, and, having made the election, is bound by it.

[Secretary of the Interior, case of Mary A. Thompson.]

No. 8.

Twenty years' service.

Doctor Page was commissioned as a surgeon in the navy in 1811; resigned in 1824; was reappointed in 1827, and died in the naval service in 1832.

His widow now claims a pension as having been the wife of a surgeon of more than twenty years' standing in the navy. My opinion is, that she is not entitled to a pension upon the principle set up by her. The two commissions, and the service under them, cannot be united for the purpose of justifying a claim for the amount claimed by the petitioner. When he resigned his first commission, he became a private citizen; and had he died before his second appointment, his widow would have been entitled to no pension whatever; and it is only by virtue of his second commission that she is entitled to a pen-

sion at all ; and, in my judgment, the law will not warrant the taking into view his services under the first commission, in computing the time which is to determine the amount of the pension of his widow. Therefore, it seems to me, she is entitled to a pension as the widow of a surgeon who was commissioned in 1827 and died in 1832.

[Opinion of Attorney-General, June 1, 1839.]

No. 9.

Suicide.

Suicide in a fit of insanity, superinduced by disease contracted in the line of his duty, entitles the widow to a pension.

[Secretary of the Interior, case of R. G. Cooper.]

No. 10.

Construction of Acts.

Acts of January 20, 1813 ; March 4, 1814 ; March 3, 1817 ; May 23, 1828 ; and June 28, 1832.

Considering the force of the word "*officer*" in the act of January 20, 1813, and of the word "*belonging*" in the second section of the act of March 4, 1814, I am of opinion that, in the true construction of the acts in question, the death must take place while the party is in service. If he dies after his discharge, it is not "an officer of the navy or marines," nor "an officer, seaman, or marine, *belonging* to the navy of the United States," who is killed or dies ; but a person who has been such officer, seaman, or marine. The idea that the death must have occurred in the service, was evidently entertained by Congress, when they passed the continuing acts of May 23, 1828, and June 28, 1832, which may be regarded as a legislative construction of the acts of 1813 and 1814 ; and when, in addition to this, we have the express provision of the act of March 3, 1817, confining the death to the period of service, I am now satisfied, (though I confess I see no great justice in such restriction,) that these acts were intended to be confined in the same way.

[Opinion of Attorney-General, July 1, 1838.]

Acts of January 20, 1813 ; March 4, 1814 ; March 3, 1817 ; March 3, 1819 ; and January 22, 1824.

With regard to public armed vessels. — The act of January 20, 1813, "providing navy pensions in certain cases," enacts, "that if any *officer* of the navy or marines *shall be killed or die, by reason of a wound received in the line of his duty*, leaving a widow, or if no widow, a child or children, under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay," &c. I have given the punctuation of this act as it stands printed in the fourth volume of the Laws of the United States, page 486 ; according to which punctuation, the construction of the law would seem to be, that, if any officer of the navy or ma-

rines should, 1st, be killed by reason of a wound received in the line of his duty, or, 2d, die by reason of a wound received in the line of his duty, his widow and children should have the provision made by the act. According to this construction, the only difference between the two cases consists in the officer's being killed immediately, upon the spot, or dying some time afterwards, in consequence of the wound. But, in both cases, the death is to be produced by a wound; — by a wound received how? The act answers, *in the line of his duty*. Does this mean a wound in battle, and does it mean such wound *only*? The act does not say so, unless he can be considered in the line of his duty *only* while he is engaged in battle. But *the line of his duty* is much more extensive and diversified. It extends to all the operations of the ship, whether civil or military; and takes in the whole of her navigation during the entire cruise. The officer who is killed, or dies by reason of a wound received by the falling of a spar in a tempest, is as entirely within the description of being killed, or dying by reason of a wound received *in the line of his duty*, as the officer who is killed or dies by a wound in battle. But the punctuation is, in my opinion, erroneous, and throws a false construction upon the act. It should, I think, be thus: "If any officer of the navy or marines shall be killed, or die by reason of a wound received, in the line of his duty," &c. — that is, if any officer shall, 1st, be killed in the line of his duty; or, 2d, die by reason of a wound received in the line of his duty — so as to embrace the case of all officers who are killed in the line of their duty, whether killed in battle or in storm, by wounds or drowning, or any other cause growing out of their duty, and inflicting death. Now, according to this construction, the widows and children of all *officers* who have perished by either of the causes set forth in the above three questions, would be entitled to the provisions prescribed by that act, because those questions do, one and all, put the case of persons killed in the line of their duty; unless it can be said, with truth, that a man who is drowned is not killed. If this act were to be considered in itself, and it were important, for the benefit of the widows and children of the officers of the navy, to insist upon this construction which I have indicated, I should have no hesitation in doing so; more especially when it is considered that the humane and liberal policy in which these acts originated justifies and demands a liberal interpretation of them. The next act upon the subject is that of March 4, 1814, "giving pensions to the widows and orphans of persons slain in the public and private armed vessels of the United States." The first section relates to *private armed vessels*, and embraces the case of *officers*, seamen, and marines, who shall die, or shall have died, since the 18th day of June, 1812. The second section, which alone relates to the navy, or public armed ships, is curiously constructed, and is in these words: "That if any seaman or marine belonging to the navy of the United States *shall* die; or, if any *officer, seaman, or marine*, shall have died since the 18th day of June, 1812, *by reason of a wound received in the line of his duty, leaving a widow,*" &c. So that this act makes no provision for the case of *officers who should*

be slain thereafter: the whole provision for the future being confined to the case of seamen and marines; while, with regard to the *past*, (back to the 18th day of June, 1812,) it provides for the case of *officers, seamen, and marines*, who had been *slain in the public vessels of the United States*, (according to the language of the title,) or who had died by reason of wounds received in the line of their duty. With regard to seamen and marines, this is the first act which provides for their widows and children; and the provision is clearly confined to the widows and children of such as had been, or should be, *slain in the public armed vessels of the United States*; or, according to the language of the enactment, such as had *died, or should die, by reason of wounds received in the line of their duty*; — language too precisely fixed by usage to embrace the cases put in the questions, of persons who had been *drowned*. By this law, therefore, no provision is made for the widows and children of seamen and marines who had been, or should be, drowned in the line of their duty. With regard to officers, I do not consider this act as altering their condition under the act of January 20, 1813, except so far as it looks back before that act, up to June 18, 1812. For the act of January 20, 1813, was entirely prospective, and consequently made no provision for the case of officers who had been killed theretofore since the day of the declaration of war, (June 18, 1812.) This omission is supplied by the act of March 4, 1814, so far as relates to officers who had died in that interval of wounds received in the line of their duty, but does not embrace the case of those who had been *drowned* in that interval. But after January 20, 1813, the act of that date took effect in behalf of the widows and children of officers who had either been *killed in the line of their duty, or had died of wounds received in the line of their duty*. This act is not repealed by the act of March 4, 1814, either expressly or impliedly; for there is no express repeal, and no incompatibility between the provisions of the two acts — the act of March 4, 1814, only repealing one of the provisions of the act of January 20, 1813, leaving the other cases provided for by that act untouched; and the act of March 4, 1814, dealing only with the past cases of officers, and making no provision for future cases, but leaving the future to stand solely upon the provisions of the act of January 20, 1813. But whatever doubt may have existed as to the construction of the antecedent acts, seems to have been removed by the act of March 3, 1817, passed for the express purpose of amending and explaining the act of March 4, 1814, as its title declares; and produced, no doubt, by the case of the *Epervier*, — the recent knowledge of whose loss had awakened a strong feeling of sympathy in the community, as is evinced by the act of the same date, for the temporary relief of the widows and children of those who had been lost in that vessel.

The act now under consideration provides that if any officer, seaman, or marine, belonging to the navy of the United States, *shall die, or shall have died, since the 18th day of June, 1812, in consequence of disease contracted, or of casualties or injuries received, while in the line of his duty*, and which shall be satisfactorily proved

to the Commissioners of the Navy Pension Fund, leaving a widow, &c. The cases put in the three questions appear to me to be clearly and completely covered by this law, so far as officers, seamen, or marines, belonging to the navy of the United States, are concerned; for those are all cases of persons *who had died while in the line of their duty*, and who had died *in consequence of casualty* which had occurred while in the line of their duty.

If any doubt could fairly arise as to the intention of the Legislature in the use of language so broad and general as this, it would seem to be removed by subsequent laws, where a different phraseology is adopted to express the understanding of Congress as to the effect of this law, and to continue this effect.

Thus, the act of March 3, 1819, is entitled "An act extending the term of half pensions to the widows and children of certain officers, seamen, and marines, *who died in the public service.*" And the first section provides, that "in all cases where provision has been made by law for five years' half pay to the widows and children of officers *who were killed in battle, or died of wounds received in battle, or who had died in the naval service of the United States during the late war*, the said provisions shall be continued," &c.

So, also, the act of January 22, 1824, is entitled "An act further extending the term of half pay pensions to the widows and children of officers, seamen, and marines, *who died in the public service.*"

And the first section provides, "that in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle, or *who died in the naval service of the United States during the late war*," &c.

This general language — "*who died in the public service*" and "*who died in the naval service of the United States*" — more especially when taken in connexion with the other classification contained in the act of March 3, 1819, can have no application to any antecedent act, except that of March 3, 1817, and may well be considered as a legislative exposition of that act: in which light it seems to me to place beyond controversy death from any species of casualty occurring in the line of their duty; and thus to present an affirmative answer to all three questions submitted for my opinion.

These questions are confined to the period between the 18th June, 1812, and the 22d January, 1824, the date of the last mentioned act; which whole period is filled up by the operation of the act of 3d March, 1817: that act operating retrospectively as well as prospectively. And although it is repealed by the 2d section of the act of 22d January, 1824, yet there is a saving of all pensions granted, and all rights which had accrued under it.

[Opinion Attorney-General, March 31, 1835.]

Acts of January 20, 1813; March 4, 1814; March 3, 1817; March 3, 1819; January 22, 1824; and May 23, 1828.

The act of January 20, 1813, is the first which makes provision for the widows and children of officers, seamen, or marines; and it provides for the *widows and children of officers* of the navy or ma-

rines who *shall be killed or die by reason of wounds received in the line of their duty*. This law, though passed during the war, takes no notice of the fact. It is not limited to the war. It does not look back to the beginning of the war. It is solely prospective, and it is permanent; but it is limited to the widows and children of officers.

The act of March 4, 1814, in its 2d section, cures the omissions of the act of 1813, and extends the benefit of the pension fund to the widows and children of *seamen and marines who shall die*, and to those of any *officer, seaman, or marine, who shall have died since the 18th June, 1812, by reason of any wound received in the line of his duty*. The objects of the law were manifestly to place the widows of seamen and marines, prospectively, on the same ground on which the act of 1813 had placed the officers alone; and its further object was to give the whole body all the retrospective benefits of the same provision, back to June 18, 1812, the day of the date of the declaration of the late war. The law is thus retrospective to June 18, 1812; but, prospectively, it is permanent. It is not, therefore, limited to those who shall be killed or die of wounds during the war. It takes no notice of the war, further than to carry back the provisions to June 18, 1812; the reason of which date we are to learn from another law, which shows us that the war was declared on that day.

The laws of 1813 and 1814, then, making properly one law, and presenting a system of pensions commencing June 18, 1812, are prospective and permanent from that day. But it is proper to observe, distinctly, on this law of 1813-'14, (considering them, as they ought to be considered, as one law,)—

1. That it is not confined to cases of persons *killed in battle*, or *dying of wounds received in battle*, but that its provisions extend to the representatives of all who shall die, or shall have died, by reason of a wound received *in the line of their duty*. Thus, a death inflicted by the falling of a mast in a storm would bring the case as clearly within the laws as a death inflicted by battle.

2. That it is not confined to persons killed or *dying of wounds during the late war, or during any future war*. The 18th of June, 1812, is referred to, only for the purpose of fixing the commencement of the act. But that point given, the law applies equally to all persons *killed or dying of wounds received in the line of their duty, whether in peace or in war*, through all futurity, so long as the act shall be suffered to stand as a permanent one.

The practical construction given by the commissioners of the navy fund to these laws was, I believe, that which their language most obviously imports, to wit: that the pensions were confined to the widows and children of those *who had been killed, or who had died of wounds received in the line of their duty*.

But Congress seems to have thought that there were other persons equally entitled to the benefit of that fund; and hence the law of March 3, 1817.

This law accordingly extends the benefit of that fund to the widows and children of officers, seamen, and marines, who *shall die, or who*

shall have died since June 18, 1812, in consequence of diseases contracted, or of casualties or injuries received while in the line of their duty. This law, like that of March 4, 1814, looks back to the beginning of the war: and like that, too, it looks forward, not to the end of the war, but *permanently*.

We have now two classes of pensioners, placed precisely on the same footing:

1. The representatives of those who have been killed, or who have died of wounds received in the line of their duty, under the act of 1813-'14.

2. The representatives of those who had died *in consequence of disease contracted, or of casualties or injuries received in the line of their duty, by the act of 1817.*

Both classes standing upon the same date—June 18, 1812; both classes standing on the same permanent provisions; both classes standing on the same rate of pensions—to wit, the half pay for five years.

Next in order came the act of March 3, 1819, which demands particular attention; for, on the correct construction of this act depends, I think, the answer to the question we are considering.

The words of the act are these: "That in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, *who were killed in battle, or died of wounds received in battle, or who died in the naval service of the United States during the late war*, the said provision shall be continued for the additional term of five years, to commence at the end of the first term of five years in each case respectively, making the provision equal to ten years' half pay."

The question is, whether it was the intention of this law to continue the benefit of the pension fund to both the classes above mentioned, or to the class only who had been provided for by the law of 1813-'14?

To me, it is very apparent that it was to continue as to both. For if the intention was to limit it to those *who were killed in battle, or had died of wounds received in battle*, (the class provided for by the acts of 1813-'14,) why are the words added, "*or who died in the naval service of the United States?*" These emphatic words become senseless, unless they are understood as pointing to a class distinct from that which had been previously mentioned; and there was no other class to which they could possibly point, but that created by the law of 1817. To be sure, the description is not so expanded as it is in the act of 1817, by the addition of the words, "*of disease contracted, or of casualties or injuries received, while in the line of their duty.*" Nor was this at all necessary to manifest the intention of Congress; because the first description, of "*those who had been killed in battle, or had died in consequence of wounds received in battle,*" clearly contemplated the class provided for by the act of 1813-'14. The turning to another and distinct class, who had also been provided for—to wit, those *who had neither been killed in battle, nor had died in consequence of wounds received in battle, but who*

had nevertheless died in the naval service of the United States, indicated necessarily the class which had been provided for by the act of 1817; there being no other class which had been provided for.

With regard to the words, *during the late war*, they prove nothing, with reference to the first point, either way; for the operation of the law of 1813-'14 was not more limited to the late war than the act of 1817. In this respect, as has been shown, the laws were exactly upon the same footing, having precisely the same commencement—June 18, 1812; and the same duration, being both of them permanent. These words, therefore, are just as ineffectual to show the intention of Congress to be limited to the one law as the other. As a descriptive circumstance of an existing law, they are just as applicable to the one law as to the other. In truth, they are not applicable to either as a descriptive circumstance of an existing law; for neither law had limited the benefit of its provisions to the representatives of those who had either been killed or had died during the late war.

The argument which would rest upon these words to show that the act of 1819 meant to continue *only the provision* which had been made for the benefit of those who had been killed or had died of wounds received *during the late war*, must show that *there was such a provision, to which alone these words could apply*. But we have seen that there was no such *provision*; but, on the contrary, the provision alluded to extended not only over the war, but over the peace which followed it, and over all futurity, till it should be repealed. And as to the act of 1813-'14 covering the period of the war, so also does the act of 1817.

In short, I cannot surmount the circumstance of a second class being distinctly introduced in the act of 1819, after the class covered by the act of 1813-'14 had been already provided for. The words which introduce that second class are presented too emphatically, and are too important in themselves, to be rejected as surplusage. It is against one of the best established rules of construction of statutes to consider as *inoperative* words which are manifestly intended to have an operation, and which have a sensible subject on which they can operate. The rule is, that every word shall take effect if it can; and here these words take effect. There was a class of persons on whom they could operate—a class for which Congress had already shown so much regard as to place them on the same footing with the first class under the act of 1813-'14. Not only was there a class on whom these words could operate, but it was the only class in whose favor they could operate; the first class having been already covered by the previous part of the section, and there remaining no other class to which these words could have any possible application, but the class described in the act of 1817. I find myself constrained, therefore, to concur in the opinion which I see expressed in the margin of the act of March 3, 1817, as printed in the 6th volume of the Laws of the United States, that the act "was extended by the act of 1819." But I do not think that the act of 1819 gives the additional five years *to the whole* either of the first or second class.

With regard to the first class: the act of 1813-'14, according to my construction of it, provides for all who had been killed or died of wounds received *in the line of their duty, whether in battle or not in battle—whether in peace or war.*

But the act of 1819, in its operation on this class, gives the additional five years to those only who had been killed *in battle*, or had died of wounds received *in battle*; and that, too, during the war.

So in regard to the second class created by the act of 1817: that act provided for all who *had died* or *should die* of disease contracted, or casualties or injuries received while in the line of their duty, from June 18, 1812, through all futurity, till this act should be repealed.

But the act of 1819, in its operation on this class, gives the additional five years to those only *who had died in the naval service during the late war.*

Thus, while it continues partially the provisions which had been made for both classes, this act of 1819 places limits on both, and confines the additional five years to *portions only* of each general class, in the manner which has been stated.

My reading of the act of 1819 is, that it gives the additional five years—

1. To the widows and children of *such* of the officers, seamen, and marines, provided for by the act of 1813-'14, as had been killed *in battle*, or had died of wounds received *in battle, during the late war.*

2. To the widows and children of *such* of the officers, seamen, and marines, provided for by the act of 1817, as had died in the naval service during the late war, in consequence of disease contracted, or of casualties or injuries received, while in the line of their duty.

Thus the broad construction which the acts of 1813-'14 and 1817 present upon their faces, and which they must have received, and still must receive (except so far as repealed) on an original application for a pension under them, becomes narrowed by the operation of the act of 1819, so far as the additional five years is concerned, and no farther.

Such is my construction of the act of 1819.

The next act in order is that of January 22, 1824. This act is composed of two sections. The first is this:

Be it enacted, &c., That in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States, during the late war; and also in all cases where provision has been made for extending the term of five years, in addition to the first term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the second term of five years, in each case, retrospectively, making the provision equal to fifteen years' half pay."

It is observable that the same recognition of the two classes of pensioners on which I have already remarked, under the act of 1819, is here still kept up, and five years of additional pension is added to both.

It is further observable that the first class is here again, in the first

instance, narrowed. According to the act of 1819, a person dying *after the late war*, of a wound received *in battle during the war*, would have clearly presented a case within the act. Is it so under the act of 1824?

The words of the act of 1819 are, "who were killed in battle, or *died of wounds received in battle*, or who died in the naval service of the United States during the late war." These words, "during the late war," I understand as applicable to both classes; and they are to be used as belonging equally to both classes.

Then the first class, as described by the act of 1819, is this: "Those who were killed in battle, or *died of wounds received in battle*, during the late war." While, under the act of 1824, the first class is described thus: "Those who were *killed in battle during the late war*," omitting those who died *after the war*, of wounds received *in battle during the war*.

Whether this omission was designed or not—whether it could have been supplied by construction—or what would have been the effect of this description, had it stood alone—it is needless to inquire; because the act of 1824, after thus describing the classes, cures all omissions by adding, "And also in all cases where provision has been made for extending the term of five years, in addition to the term of five years." This is an adoption of all who have been provided for by the act of 1819; and five years additional were now given by the act of 1824, to all who were embraced by the act of 1819. So that, if I am right in my construction of the act of 1819, *that portion* of the second class *who died in the naval service during the late war*, in consequence of disease contracted, or casualties or injuries received, while in the line of their duty, are again provided for by the act of 1824, and another five years is given them.

Such is my construction of the first section of the act of 1824.

The second section of that act repeals the act of March 3, 1817. What is the effect of this repeal? Simply to destroy its original character as a *prospective permanent law*, from the day of the repeal. Up to the day of its repeal, it was an existing law, and in its character permanent. Up to that time it covered all deaths from the causes it enumerates, from June 18, 1812. The rights which it gave through that whole period were vested rights; and were not divested, nor proposed to be divested, by the repeal of the law.

I hold, therefore, that in all cases where officers, seamen, or marines, have died in the naval service of the United States, between June 18, 1812, and June 22, 1824, in consequence of disease contracted, or disabilities or injuries received in the line of their duty, the widow and children of such deceased are entitled to the five years' pension given by the act of March 3, 1817. From January 22, 1824 (the date of the repeal), no death from these causes could give the widow and children any such right. But this was the whole effect of the repeal; it left the rights already vested under the act of 1817, in full force; and it does not profess to repeal the act of 1819, which had already taken up and provided for a portion of these pensioners (the representatives of *those who have died in the naval service during*

the late war); nor to impugn the first section of this act (1824), which had already continued the provisions of the act of 1819. So that, if I am right in my construction of the act of 1819, that it covered this portion of these pensioners; and of the first section of the act of 1824, that it continued this cover—the repeal of the act of 1817 leaves them untouched; because their new rights for the additional five years did not depend on that act (1817) at all, but solely on the acts of 1819 and 1824.

We come now, lastly, to the act in question—that of May 23, 1828; the first section of which is word for word with the first section of the act of 1824, *mutatis mutandis*. So that my construction of the first section of the act of 1824 is my construction of the first section of the act of 1828. And the soundness of the whole opinion depends on the construction of the act of 1819, which I consider the hinge of the controversy.

The first section of the act of 1828 does not extend all provisions given by the law of 1814, but such part of them only as, under the operation of that act, had been assigned or belonged to the widow and children of those officers, seamen, and marines, who had been killed *in battle*, or who had died of wounds received *in battle during the late war*.

And so far, and so far only, as the act of 1817 operated to give pensions to the widows and children of officers, seamen, and marines, *who died in the naval service during the late war, in consequence of disease contracted, and casualties and injuries received in the line of their duty*, these provisions have been regularly and successively continued by the acts of 1819, 1824, and 1828; and are, consequently, so far embraced by the first section of the last mentioned act.

[Opinion of Attorney-General, July 22, 1828.]

Acts of 1813, 1814, 1817, 1819.

The act of 1813 provides that a pension shall be allowed to the widow, and, if there be no widow, to the child or children (being under sixteen years of age) of any *officer of the navy or marines*, who shall be *killed, or die by reason of a wound received in the line of his duty*. This act, it will be observed, is confined to the widows and children of *officers*; and simply requires that the death, or wound from which death has ensued, shall have been received by such officer “in the line of his duty.”

The act of 1814 extends the provision prospectively to the widows and children of “seamen” and “marines;” and then, including *officers*, provides *retroactively* for all deaths which may have occurred *since the 18th June, 1812*, the date of the declaration of war against Great Britain; using the same words to describe the nature of the death which shall entitle to pension—that is to say, that it shall have been occasioned by a wound *received in the line of duty*—as are used in the act of 1813; and, like that act, not requiring that the death shall occur prospectively, within any specified time.

It is the purpose of the act of 1817, which is amendatory of the

preceding act, to give to this provision a still greater extension; and, accordingly, in relation to the same class of persons, provides for deaths which shall occur, or shall have occurred since the 18th June, 1812, "in consequence of '*disease contracted*,' or of '*casualties*,' or '*injuries* received,' while in the line of duty." The former acts provided only for cases of death in consequence of *wounds*; while this extends the provision to cases where death has ensued from "*disease contracted*," or "*casualties or injuries received*." In neither of the acts is there any prospective limitation of *the time when the death must occur* to entitle the widow or children to the benefit of the pension.

These three acts, it will have been seen, provide, permanently, for the allowance of a pension to the widow, or child or children under sixteen years of age (if there be no widow), of every officer, seamen, or marine, of the navy of the United States, who has died since the 18th June, 1812, or who shall die after the date of the acts, in consequence of wounds, diseases, casualties, or injuries, received or incurred in the line of his duty; that is, as I understand it, who shall come, or who shall have come to his death, since the prescribed period, in whatever manner, and either presently or remotely, in the discharge of his duty. Prospectively, the provision is unlimited. Retrospectively, it is restrained to the 18th June, 1812. These are the several acts which relate to the *original grant* of pensions. Those which follow provide for the *renewal* of them.

We are now prepared to examine the act of 1819, to which your inquiry relates, and concerning which you ask, in substance —

Whether, to entitle a widow, or child, to the renewal of a pension under that act, it is necessary that the officer, seaman, or marine, through whom it is claimed, should have been wounded during the war, and *should also have died during the war*?

The act under consideration provides, "that in all cases where provision has been made by law for five years' half pay to the widows and children of officers, seamen, and marines, who were killed in battle, or died of wounds received in battle, or who died in the naval service of the United States, during the late war, the said provision shall be continued," &c.

If I were required to interpret this act *strictly*, with a view to narrow, as much as its terms would permit, the bounty which it provides; — if I were obliged (overlooking what I conceive to be the spirit and intention of the act, to found my answer on its *letter*), and to construe that most strongly against the grantee, — I should perhaps be constrained to acquiesce in the opinion given by my predecessor to yours, on the 22d July, 1828, which is before you. But, after a very careful and anxious consideration of the subject, I cannot divest myself of the conviction that such was not the intention of Congress, and that the words of the act are fairly susceptible of a different interpretation. I do not propose to trouble you with an elaborate argument on this question, but will content myself with such an exposition of my views as may suffice to render them intelligible.

In framing the act of 1819, Congress had it in view to provide for an extension of the bounty which had been therefore granted to the widows or children of certain persons who had "died in the public service." This intention is expressed in the title of the act, which, although it cannot be used to extend the provisions of the enacting clauses, ought not to be wholly disregarded in searching for the intention of the law-makers.

The mode resorted to, to carry this intention into effect, was by an enactment which should, in terms, extend the provisions of the former pension laws. Congress, in the act of 1819, have not enacted *substantively* that the widows, &c., of officers, &c., who were killed in battle, or who died of wounds received in battle, or who died in the naval service of the United States during the late war, shall receive five years' additional pension. But, referring to the former laws, they have declared that, where *provision has been made by law* for persons of that description, their pensions shall be renewed. To give effect, then, to the act of 1819, it is obviously necessary that there should be some pre-existing laws which make such provision as it specifies. If one construction of its terms shall be found to correspond with pre-existing laws, and another not to do so;—if, according to one interpretation, the *provision* to which it refers has in fact been *made by law*, while another supposes a reference, to which no answering provision can be found to have *been made by law*—the former is, without doubt, to be adopted, in order to give effect to the act.

With this idea in view, let us proceed in our examination. The persons to whom this bounty had been granted before 1819 were the widows or children—

1st. Of officers, seamen, or marines, who, since the 18th June, 1812, had been killed in battle.

2d. Of the same classes, who, since the same period, had died by reason of a wound received in the line of their duty.

3d. Of the same classes, who, since the same period, had died in consequence of diseases contracted, or of casualties or injuries received, while in the line of their duty.

These provisions had been made by the several acts of 1813, 1814, and 1817; and it is observable, that the widows or children of these several classes of persons were entitled to the pensions provided for by the acts above referred to, *without regard to the time when the death occurred*, except that it must have happened after the 18th June, 1812.

These were the only acts which Congress can be supposed to have had in contemplation in framing the act of 1819; and the pensions which they granted were so granted, without reference to the fact whether the death had occurred in war or in peace. No such distinction was recognised by pre-existing laws. No act had made provision for five years' half pay to the widows and children of officers, seamen, and marines, who had been *killed during the war*, or who had *died during the war*, of wounds received in battle, or who had died in the naval service of the United States during the war. It

was not possible, in reading those acts, to affix such limitations to either of them. It was true, indeed, that the widows or children of persons killed during the war, or dying during the war, of wounds received in battle, or who had died in the naval service of the United States, during the war, had been placed on the pension list, and were in the receipt of the five years' half pay; but this was under the more general provisions of these acts, which were equally applicable to them and to others—to those who had died *in war*, as well as to those who had died *in peace*; and they were not so placed on the pension list because these events had occurred *during the war*, but because they had occurred *after the 18th June, 1812*.

If, then, it had been the intention of Congress, in the act of 1819, to limit the renewal of pensions to cases where the death had occurred during the war, it seems to me that they would have done this by a distinct and substantive enactment to that effect—not by a reference to the provisions of former laws; and for the obvious reason, that no act containing such restrictive provisions as this construction ascribes to the act of 1819 was to be found.

I think, moreover, that the words of the act of 1819 are fairly susceptible of a different interpretation from that which excludes all persons except those who died during the war. These words are “where *provision has been made by law* for the widows,” &c., “of officers,” &c., “*who were killed in battle, or died of wounds received in battle,*” or “*who died in the naval service of the United States during the late war.*” These latter words (“during the late war”) are words of limitation—of restriction. Now, I think it may be well questioned whether their operation ought not to be *confined to the last member of the sentence*—whether it was intended that they should do anything more than to *qualify the grant to the third class* of persons enumerated, namely, those who had died in the naval service of the United States. Then the classification would stand thus:

To the widows or children—

1. Of those who had been killed in battle.
2. Of those who had died of wounds received in battle.
3. Of those who had died in the naval service of the United States during the late war.

In support of this suggestion, I would remark — 1st. That it was obviously unnecessary to apply this restriction to the *first* class. The wound and the death were contemporaneous in such cases. 2d. That no sufficient motive can be assigned for an intention, on the part of Congress, to apply it to the *second*. They meant to provide for the widows and children of those who died of wounds received in fighting the battles of their country; and whether the death was instantaneous, or occurred after an interval, if it could be certainly traced to the wound, the motive in either case would be the same. 3d. We may readily understand why the restriction was applied to the *third* class. That class includes deaths from every other cause, except wounds received in battle. To excite the crew of a national ship to deeds of heroism in time of war, Congress might be willing to allow a pension to the widow, &c., of a seaman who fell from the mast-

head and was killed; and yet not think proper to extend the same bounty, in a case of similar casualty, occurring in time of peace. It would, then, be useless to apply these restrictive words to the first class. It would be improper to extend them to the second; but a very sufficient motive is found for their application to the third. It is fair to presume that Congress was actuated by a corresponding intention.

But let us suppose these words of restriction applicable to each of the three classes of cases specified, and not exclusively to the last;—the inquiry is, do they relate to the time of *the death*, or to the time *when the cause occurred* which occasioned it? Apply the inquiry to the second class, to which your question more particularly refers—to those who died of wounds received in battle—and consider them as restricting the cases of that class to which the renewal should extend. In this case, they must be read in immediate connexion with the words which they are supposed to limit. Put these restrictive words, then, in juxtaposition with the descriptive words which relate to that class, and you will have the following collocation: “Who died [of wounds received in battle] during the late war?” Here is a sentence which consists of three members: the *first*, “who died,” relates to the *death*, the primary motive to the allowance of the pension: the *second* specifies the *cause* of that death, in the words “of wounds received in battle;” the *third* defines the *time of their being received*—“during the late war.” It may, perhaps, be said that these last words relate to the *time of the death*, and not to *that of receiving the wound*; because the term “*battle*” supposes a state of war, and that a wound received in battle must have been received during the war. If this be conceded, I think it may be satisfactorily answered that sufficient effect may be given to the words “in battle,” without ascribing to them this forced operation. A man may have received a wound during the late war which occasioned his death, and yet have furnished no meritorious claim to his widow or children to the allowance of a pension. His wound may have been received in a mutiny, from the hand of an *assassin*, or in *private combat*. To exclude such cases, the expression “in battle” is used; and the effect is to confine it to wounds received *in fighting the enemies of his country*. It is still open, then, to us to inquire what is the fair interpretation of this sentence? Do the restrictive words apply to the first or last member of it? to persons who *died during the last war*, or to those who died—no matter when—*of wounds received in battle during the last war*? In fair grammatical construction, the last member of the sentence is the immediate antecedent, and the operation of the restrictive words cannot go beyond it.

Test this by an example. If the opinion of the physicians who were consulted was correct, the late Major-General Brown ultimately fell a victim to the wounds which he received on the Niagara frontier. Admitting this to be true, may it not be said of General Brown that he “died of wounds received in battle during the late war?” and would any one understand the speaker to intend thereby to assert that he “*died during the late war*?” I think not; and yet these

are the identical words of the act to which that construction has been given.

If we look to the intention of Congress—to the motive which would probably influence them in granting the renewal of a pension—this construction is confirmed. What conceivable difference can it make in the justice of the claim to a pension, whether the officer, &c., dies at the instant of receiving his wound, or languishes until the end of the war, and then breathes his last? What conceivable difference is there between the two cases, as relates to *the wants of his widow and children*? It is the *heroism which impels him to the conflict* which you would reward in the person of his widow or children; and *they are equally objects of your bounty* in either case.

I think, then, that the widow or children of an officer, seaman, or marine, who has died since the late war, of a wound received in battle during the war, is, or are entitled to a renewal of his, her, or their pension, under the act of 1819; and I found this opinion upon the following considerations:—

1. That, unless this interpretation be given to that act, there are no such pre-existing laws as those to which its provisions could be made to refer.

2. That this interpretation is sanctioned by the rules of grammatical construction applicable to the sentence on which the question arises; and that such a sentence would be similarly understood in common parlance.

3. The interpretation thus deduced from the reference of the act of 1819 to pre-existing laws, and from the grammatical construction and familiar use of the sentence, is confirmed by a consideration of the motives which may reasonably be presumed to have influenced Congress in passing the act.

[Opinion of Attorney-General, September 6, 1830.]

Acts of 1813, 1814, 1817, 1819, 1824, 1828, 1832, and 1834.

In your letter of the 10th of February last, you state that on the 18th of May, 1815, Benjamin White, master-at-arms in the navy of the United States, died in consequence of a fall through the hatchway of the United States' ship Ontario, leaving a widow, who now for the first time claims a pension. I infer from your letter, (though the facts are not distinctly stated,) that Mr. White was killed in the line of his duty, and also that Mrs. White has not been married since her husband's death.

After referring me to various acts of Congress applicable to the subject, you request me to inform you "whether, in my opinion, the benefits of these laws ought to be now extended to Mrs. White; and if not, whether she is entitled to any pension; and if entitled, at what time the pension should commence, and for what period should it be allowed?"

The acts of Congress in relation to navy pensions are so numerous and intricate, that I have found it a task of no little labor and difficulty to extract from them a satisfactory reply to your queries;

especially as I find, on a careful examination of the records of this office, that many of their provisions have, from time to time, been referred to this office for construction, and that, on several of these occasions, the decision appears to have been founded rather on the usage of your Department than on the language of the Legislature.

To secure uniformity of judgment, and conform, as far as I can, to the practice which has heretofore obtained in analogous cases, I shall take up the case of Mrs. White at the date of her husband's death, and, by the aid of the decisions made by my predecessors, endeavor to dispose of it in accordance with the principle of those decisions.

On the 18th of May, 1815, the only laws applicable to the subject were the acts of February 13, 1813, and of March 4, 1814.

According to the construction given to the act of 1813 by the Attorney-General, in his opinion of March 31, 1825, it embraces every case of an *officer killed in the line of his duty*, whether killed in battle or by *casualties*; and the case of Benjamin White was therefore within it, provided he is to be considered as an *officer* — for the act does not extend to seamen. I am by no means certain that a *master-at-arms is an officer of the navy*, within the meaning of the act of January 20, 1813. In the acts of Congress then in force, he was called and treated as a *petty officer*, as contradistinguished from *seamen*. I am, therefore, inclined to think he was an *officer* within the act of 1813, and that his widow was, accordingly, entitled to the benefits of that law; but, as this is a question which belongs rather to the naval service than to this office, I shall not express a positive opinion thereon.

If the act of February, 1813, did not embrace this case, then Mrs. White, *at the time of her husband's death*, was not entitled to any pension; because the act of March 4, 1814, as expounded in the above-cited opinion, was confined to persons *slain* by wounds; and so far as *officers* are concerned, its provisions were entirely retrospective — covering those cases, and those only, in which officers *had* been *slain* in the line of their duty, between July 18, 1812, and the date of the law.

According to the construction thus given to these two acts, White, if an *officer*, was embraced in the act of 1813, and not in that of 1814; but, if not an officer, he was not embraced in either; not in the act of 1813, because that act is confined to *officers*; and not in that of 1814, because that is confined to persons *slain*, and did not extend to deaths by casualties.

But it is to be observed, that the act of March 4, 1814, was subsequently extended, by the amendatory act of March 3, 1817, so as to include *officers*, as well as *seamen*, in all cases, and so also as to include deaths by disease and casualties; and that, under this amendatory act, Mrs. White would have been entitled to a pension, whether her husband be considered as an *officer* or a *seaman*. It is true that the amendatory act of 1817 was repealed by the act of January 22, 1824, but with a saving of pensions already granted, and of all rights accrued under it.

So much, then, may be considered as certain, viz. : that Mrs. White, provided her husband be regarded as an *officer*, was entitled, under the act of 1813, at her husband's death; and if not an officer, then under the act of March 3, 1817, from the date of that act, to the ordinary pension of five years' half pay.

Then comes the act of April 16, 1818, in addition to the act of March 4, 1814; but, as both sections of this law relate exclusively to persons who served in *private armed ships*, they have no bearing on the present case, and may be laid out of view.

Next in order of time is the act of March 3, 1819, extending the term of half-pay pensions previously granted by law to the widows and children of certain officers, seamen, and marines, who had been killed or died in the naval service, *for an additional term of five years*. But this act did not apply to Mrs. White's case, whether her right be regarded as commencing under the act of 1813, or under that of 1817; because it is expressly confined to the cases of persons killed or dying "*during the late war*;" and White was killed in May, 1815, after the termination of the war. The same remark must be made as to the act of January 22, 1824, "further extending the term of half-pay pensions," &c.; the acts of April 9, 1824, or of May 26, 1824, (which are, moreover, confined to private armed ships;) and the first section of the act of May 23, 1828, "extending the term of certain pensions chargeable on the Navy and Privateer Pension Funds."

By the act of June 28, 1832, "further to extend the pensions heretofore granted to the widows of persons killed, or who have died, in the naval service," is not confined to cases which occurred during the war. It provides "that, in all cases where provision has been made by law for the five years' half pay to widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States; and, also, in all cases where provision has been made for extending the term of five years, in addition to any term of five years, the said provision shall be, and is hereby, further extended for an additional term of five years, so far as respects widows only; to commence at the end of the current or last expired term of five years, in each case respectively."

This latter act embraces the case of Mrs. White, and adds five years to the five years before allowed by act of 1813, if her husband was an officer; and by that of 1817, if he be regarded as a seaman merely: thus making the pension equal to ten years' half pay.

The last act to be referred to is that of June 30, 1834, which provides, among other things, that all the provisions and benefits of the act of June 28, 1832, "be continued for another term of five years to all those widows who have *heretofore* had the benefit of the same."

Having thus collected and examined the various statutes by which, as I suppose, the case must be determined, I proceed to inquire whether the benefit of these laws, or any of them, ought now to be extended to Mrs. White.

I find this question substantially answered by the opinions of my

predecessors. In an opinion dated June 9, 1825, and transmitted under that date to the Secretary of the Navy, the Attorney-General speaks of the rights acquired by the widow under the first section of the act of March 4, 1814. Here is a certain right which the law says shall accrue to the widow on the happening of a certain event—that of her husband having died by reason of a wound received in the line of his duty on board of a private armed vessel. The law does not require either that an application shall be made by her, or that any thing else should be done in order to consummate her right. It is consummated by the mere fact of the death of her husband under the circumstances already mentioned. It is a vested right to so much money *per annum*, for five years—subject, however, to be discontinued and defeated by her death or marriage at any time within that term; but a vested and perfect right during the time that she continued to live the widow of the deceased husband, and not defeated by her subsequent intermarriage, except from the time at which such intermarriage takes place.

Such I understand to have been the uniform practice under this act, ever since its adoption; and I confess that I see no reason for changing the practice. Although the foregoing observations were made in reference to a case arising under the first section of the act of 1814, (which section relates to *private armed ships*,) the principle laid down by the Attorney-General is equally applicable to other cases.

He also says that the right of pension does not depend on the *necessities* of the parties. “It is given to the widows and children of officers and men, of rich and poor, without regard to their circumstances. It is in the nature of an absolute engagement or promise made to those officers and men, that if they fall in the service of their country, so much shall be paid to their wives and children, without inquiry into the fact whether they stood in need of it or not. Nor is there any condition annexed to the promise, that the money shall be paid *if applied for in a given time, or in a given state of things*. It is bottomed only on the single condition that the husband and father shall die in the service of his country; on the happening of which condition, the public engagement becomes a *debt*, which is as much *property*, and the property of the widow and children, as any bond which the deceased may have left to them by his will.”

He therefore affirmed the validity of the practice which had obtained, as then stated to him, in the Navy Department.

In accordance with these views, I am therefore of opinion that Mrs. White is now entitled to receive the pension for five years, secured to her by the act of 1813, or by the act of 1817, as you may decide in respect to the class to which her husband belonged—(in the first, the five years will have ended May 18, 1820; in the latter, March 3, 1822;)—and also for the additional five years given by the act of 1832.

In an opinion dated October 27, 1832, and transmitted to the Secretary of the Navy, the Attorney-General decided that the act of June 28, 1832, embraced in its provisions the widows of the differ-

ent classes therein mentioned; "and that the pension of the widow, in each case, is to commence at the end of the *current or last expired term of five years*." The five years added by this law will therefore have expired, in the one case, May 18, 1825; and, in the other, March 3, 1827.

In regard to the law of June, 1834, my first impression was that it did not include Mrs. White's case; because it seemed to me, on a cursory examination of the act, that "*she had not therefore had the benefit*" of the act of June 28, 1832. But, on further reflection, I am inclined to think that Congress, by those words, meant merely to require that the widow should be one *who was embraced within the law of 1832, and therefore entitled to its benefits*; and who, in that sense, might be said to have "*had the benefit of the same*;" and that they did not intend to make the actual *receipt and enjoyment* of the pension prior to June 30, 1834, a condition precedent to the operation of the act of that date. I am confirmed in this opinion by another point adopted and decided by the Attorney-General in the opinion of June 9, 1825, before referred to. He remarks, in reference to the language of the acts of April 16, 1818, and April 9, 1824, extending pensions previously granted, (the first of which extending acts is confined to cases "*where a person has been put on the pension list or granted a certificate of pension*," under the former law; and the other of which is confined to the "*pensions of persons who now are in the receipt thereof*,") that he understands, "If a widow, whose rights commence under the act of 1814, now, for the *first time*, makes an application for her pension under *all* the past acts, no difficulty arises as to her now receiving all that these acts give her, provided that she still remains the widow of the deceased. I understand, also, that even where she has since intermarried before she has made any application, or has died before she has made any application, the uniform practice of the Department has been not to consider the application too late for all that was due at the time of her intermarriage or death; the Department having heretofore considered that as having been done which ought to have been done. It is a liberal exposition of these acts, in advancement of the public policy on which they were founded; and I see no sufficient cause to disturb it by recommending a change."

The language of the act of 1834 is certainly not so strong as that used by either of the acts referred to; and I have, therefore, the less hesitation in applying the principle of the above extract. This will add another term of five years, to commence from the passage of the act of 1834.

The result, then, is, that according to the laws, usages, and decisions above stated, Mrs. White is entitled to a pension of *ten* years prior to the act of June 30, 1834; and, under the latter act, to a pension of *five*, to commence from the day of the passage thereof.

[Opinion of Attorney-General, April 5, 1836.]

Act of June 28, 1832.

I think Mrs. McCormick is entitled to her pension during the time she remained the widow of Lieutenant Leary.

If the act of June 28, 1832, stood alone, and was to be construed without reference to any of the preceding acts of Congress on the same subject, the expressions "so far as respects widows only," contained in this law, would leave it very doubtful whether its benefits were not to be confined to those who were widows at the time of its passage. But this act must be taken in connexion with the previous laws on the same subject. And I find, by the opinion of the Attorney-General of June 9, 1825, to which you have referred me, that, under the acts of Congress passed before that time, extending the periods for which the pension was allowed, widows who had married before the passage of the law, or before the application for the pension, had been uniformly held to be entitled up to the time of their marriage. As this opinion of the Attorney-General sanctioned the construction which had been given by the Government, the same practice has, I presume, since prevailed in the execution of those laws, the same interpretation being given to them. The act of 1832 appears to have contemplated nothing more than a further extension of the public bounty in favor of the widow, prolonging the period of the pension, upon the same principles and in the same cases in which it had been extended by the previous laws, so far as they were concerned, but refusing to extend it in behalf of the children. And the words "so far as respects widows only," are not, I think, intended to change the policy of the former acts of Congress, so far as concerns the widows, but to exclude the children, who, under the former laws, upon her marriage became entitled for the remainder of the time of extension.

Acts of 1817, 1819, 1824, 1832, 1834.

It appears, from the papers accompanying your communication, that the applicant is the widow of sailingmaster William Stevenson, who died in service in 1813, *but not in consequence of disease contracted, or of injury received*, while in the service; and the question arises, whether, under these circumstances, the laws respecting the navy pension fund, now in force, entitle her to be placed on the pension list.

By the act of the 3d of March, 1817 (Laws of the U. S., vol. 6, p. 212), pensions were granted for five years to the widows and children of any officer, seaman, or marine, who shall die, *or shall have died* since the 18th day of June, 1812, "in consequence of disease contracted, or of casualties or injuries received, *while in the line of his duty*." It is obvious that Mrs. Stevenson was not entitled to the benefit of this act, because her husband did not die in consequence of disease contracted, or of casualties or injuries received "*while in the line of his duty*." By the acts of the 3d of March, 1819 (vol. 6, p. 399), the 22d of June, 1824 (vol. 7, p. 213), and the 28th of June, 1832 (pamphlet ed., p. 32), some supplementary pro-

visions have been made; the effect of which, so far as the present question is concerned, was simply to continue the act of 1817, except that the second section of the act of 1832 extended to the widows of all those who may "*have died by reason of wounds received during the war.*" This enlargement of the pension list did not, however, include the case of Mrs. Stevenson, because her husband did not die by reason of any wound received during the war. The act of the 30th June, 1834 (pamphlet ed., p. 90), continues the benefit of the act of 1832, for another term of five years, to those who had theretofore had the benefit thereof; and also extended the same "to the widows of officers, seamen, and marines, who have died in the naval service *since the 1st day of January, 1824, or who may die in said service by reason of disease contracted, or of casualties by drowning or otherwise, or of injuries received while in the line of their duty.*" This last provision fails also to reach the case of the present claimant; because her husband died before 1824, and not of an injury received while in the line of his duty. I am, therefore, of the opinion that the department is not authorized to afford her any relief.

[Opinion of Attorney-General, October 17, 1834.]

Act of June 15, 1844. (*Vide acts in special cases.*)

Under the second section of this act, construed in connexion with that of June 30, 1834, when a widow dies after having received a portion of the pension, the children are entitled only to the remainder of the five years.

[Opinion of Attorney-General, January 4, 1845.]

Act of 1834.

I have examined the papers in the case of Mrs. Sarah Heberd, and submit the following opinion for your consideration:—

The applicant in this case claims a pension under the act of June, 1834, to commence from the date of the act. She is the widow of Andrew Heberd, late a chief engineer, who died on the 4th of August, 1847. The law authorizing the employment and regulating the pay of engineers was passed on the 31st August, 1842. The first section of the act provides "that the Secretary of the Navy shall appoint the requisite number of engineers and assistant engineers, not exceeding one chief engineer, two assistant, two second assistant, and three third assistant engineers, for each steam ship-of-war for the naval service of the United States." By the fourth section the Secretary is directed to appoint "a skilful and scientific engineer-in-chief, who shall receive for his services the sum of three thousand dollars per annum, and shall perform such duties as the Secretary of the Navy shall require of him touching that branch of the service." The seventh section of the naval appropriation act, approved March 3, 1845, provides "that, in lieu of the mode heretofore provided by law, the engineer-in-chief and chief engineers of the navy shall be appointed by the President, by and with the advice and consent of the Senate."

It is worthy of special notice, in the outset, that the act to regulate

the appointment and pay of engineers, while it prescribes the necessary rules for the distribution of prize-money, is entirely silent in relation to the allowance of pensions. The same remark applies to firemen and coal-heavers authorized to be enlisted by the second section of the same act. The closing sentence of the fifth section, in my opinion, has no reference whatever to pensions. It relates exclusively to the laws, rules, and regulations for the government of the naval service, to which engineers are made subject.

The questions submitted are: 1st. Is an engineer's widow entitled to a pension? 2d. If so, at what rate per month shall she be paid?

The first question depends upon the construction to be given to the act of the 30th June, 1834, and the previous laws upon the same subject. The first section of the act of 1834 provides "that all the provisions and benefits of the act of the twenty-eighth of June, one thousand eight hundred and thirty-two, entitled 'An act further to extend the pension heretofore granted to the widows of persons killed or who died in the naval service,' be continued for another term of five years to all those widows who have heretofore had the benefit of the same; and the same are hereby extended to the widows of officers, seamen, and marines, who have died in the naval service since the first day of January, one thousand eight hundred and twenty-four, or who may die in said service by reason of disease contracted, or of casualties by drowning or otherwise, or of injuries received while in the line of their duty; and the pensions of such widows shall commence from the passage of this act."

The effect of that provision was, first, to continue all the provisions and benefits of the act of 1832 for another term of five years to all those widows who have heretofore had the benefit of the same; secondly, to extend those provisions and benefits to the widows of officers, seamen, and marines, who have died in the naval service since the 1st day of January, 1824; and, thirdly, to extend the same provisions and benefits to the widows of officers, seamen, and marines, who *may die* in the naval service by reason of disease contracted, or of casualties by drowning or otherwise, or of injuries received while in the line of their duty.

It is insisted that, by a liberal interpretation of the act, Mrs. Heberd's case may be included in the third class. To effect this object, it is contended that the act should be regarded as prospective in a double aspect: that it applies to offices subsequently created in the naval service, as well as to subsequent appointments to offices previously authorized by law. No doubt the pension, being annexed to the office, inures as fully to the widows of officers subsequently appointed as to those whose husbands were in the service at the date of the act. It embraces not only the widows of those officers, seamen, and marines, who *have* died in the naval service since the first day of January, 1824; but the widows of those who *may die* in said service, under the circumstances therein mentioned. It is clear,

therefore, that it includes subsequent appointments to offices then recognised by law. Whether it can be extended to other employments to offices then recognised by law — whether it can be extended to other employments in the naval service, unknown to the law at the passage of the act — must depend in a great degree upon the nature and character of the previous acts, whose provisions and benefits were continued and extended by the act under consideration. The language of the act of 1834 is peculiar, and should be kept distinctly in view. Whatever may be its effect, it is reasonable to presume that it was based upon the offices in the navy as they existed at that time. It must be admitted that it does not, in terms, purport to include those not in existence. The legislation of Congress, in relation to pensions, does not favor that conclusion. It has not been the habit of Congress to legislate upon this subject in advance. The pension acts, which are very numerous, have generally been limited in their operation to short periods, and carefully restricted to cases of urgent demand. The truth of this remark is strikingly exemplified by the act of 1832, to which I now invite your attention. The first section provides that in all cases where provision has been made by law for five years' half pay to widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States, and in all cases where provision has been made for extending the term of five years, in addition to any term of five years, the said provision shall be, and is hereby, extended for an additional term of five years, so far as respects widows only, to commence at the end of the current or last expired term of five years, in each case respectively. All will admit, I presume, that the provisions of these two acts must be considered together, in order to collect the true meaning of the act of 1834. It will be perceived that pensions under the law of 1832 were strictly limited to cases where provision had been previously made, or the term extended, for the five years' half pay of widows. The act of 1834, in adopting that act as its basis, adopts the same limitations, which clearly restrict its operation to the offices in existence at the time of its passage. No one will pretend that any provision was ever made for the widows of engineers prior to that time.

The phrase "in all cases where provision has been made" is twice repeated in the law of 1832, and cannot be regarded as insignificant or without meaning; and unless it be so, it is impossible, it seems to me, to maintain the construction assumed by the claimant. The prospective words in the act of 1834 are fully satisfied without extending their application to offices subsequently created. The words "may die" unquestionably refer to time to come; but they have reference in this case to the death of the husband, and not to the office which he filled. In other words, widows whose husbands may die after the passage of the act of 1834 are entitled to a pension, whether the husband was appointed before or after that time, provided he filled an office in the navy which was in existence at the date of the act. In other cases, pensions cannot be allowed, unless

they are authorized by the act creating the office. The contrary rule would produce this absurdity — that, whenever a new office is created in the navy, silence on the part of Congress would be equivalent to the granting of a pension. No office could be created without this result, unless Congress saw fit to negative the inference by express enactment. In my judgment, no such interpretation of the act of 1834 should ever receive the sanction of the Department. These views will be much strengthened by reference to the second section of the act of August 24, 1842, which provides that all pensions to officers and seamen in the naval service shall be regulated according to the pay of the navy as it existed on the first day of January, one thousand eight hundred and thirty-five. At that time, there was no corps of engineers attached to the navy; and, of course, the pension in this case, if one were allowed, could not be adjusted in accordance with the requirements of that act. There being no other law upon the subject, the Department is left without any guide. It cannot be admitted that Congress has authorized a pension without presenting some mode to ascertain the amount. The rule contended for by the claimant (half the present pay) might be a very good one, if it had any legal sanction; but, unfortunately for the argument, it reposes upon no authority of law. The conclusion, it seems to me, is irresistible, that no pension can be allowed, there being no law prescribing at what rate such pension shall be paid. Probably, at the suggestion of the Department, Congress will at once correct the omission.

The argument for the claimant suggests the case of passed midshipmen as furnishing a precedent in favor of this claim. Not so. It appears from the Naval Register that the grade of passed midshipmen was recognised as early as the year 1820. No doubt it was instituted in pursuance of the authority reposed in the President to fix the pay of petty officers, midshipmen, seamen, ordinary seamen, and marines. This authority was first conferred by the seventh section of the act to provide a naval armament, approved March 27, 1794, and was embraced by subsequent provisions, till the passage of the pay law of 1835. On the 25th of June, 1827, the following general order was approved by the President: "Passed midshipmen will receive warrants as such, will take rank of all other midshipmen, and will receive the pay of twenty-five dollars per month and two rations per day." This regulation, certainly made in pursuance of law, so far as regards pay, remained unchanged on the first day of January, 1835, and continues to this time as the rule of the Department in relation to the allowance of pensions to the widows of passed midshipmen under the act of 1834. Their pensions are paid at the rate of twelve dollars and fifty cents per month.

After a careful investigation, I am of the opinion that none of the cases cited in the argument will justify the present claim. Assistant surgeons, mentioned in existing laws, are the same as surgeons' mates in the previous acts.

The same remark applies to commanders and masters, whose titles

were changed by the act of March 3, 1837. It is very clear that this act furnishes no ground of argument in favor of the present claim. It provides that "such change of title shall not affect the rank, pay, or privileges, of any master commandant or sailing-master now in the service."

I am of opinion, therefore, that the existing laws do not authorize the allowance of a pension to the widow of an engineer in the navy. Such being my opinion, it follows, of course, in my view of the case, that there is no law prescribing at what rate such pension shall be paid.

In answer to the further inquiry of the Commissioner, I have to remark that the practice of the Department in relation to the commencement of pensions is unquestionably correct. Where the death of the husband occurred prior to the passage of the act of 1834, the pension should commence from the date of the act. In all other cases, it should commence from the time of the husband's death. Otherwise a widow might be entitled to receive a pension retroactively during the whole period her husband was in office. In some other cases, probably, as in this case, if allowed from the date of the act, the pension would commence from a period before the husband entered the service; and when a few more years have elapsed, the rule, if followed, would allow a pension to a widow to commence before her husband was born. The rule adopted by the Department should be adhered to. [Opinion of Attorney-General, October 14, 1847.]

Acts of 1813, 1814, and 1837.

In reply to the question arising in the case of Peter Gordon, and proposed by your letter of February 6, 1838, I have the honor to state that, in my opinion, the first section of the act of March 3, 1837, is confined to cases where the death occurred whilst the person was in the naval service. But, under the navy pension act of January 20, 1813, and the second section of the like act of March 4, 1814, it does not appear to me that the death need occur in the naval service, provided it be proved to have been occasioned by a wound received whilst in the service and in the line of his duty.

[Opinion of Attorney-General, April 6, 1838.]

Act of 1837.

The act of March 3, 1837, was passed for the purpose of securing a more uniform and equal distribution of the Navy Pension Fund. It introduces several new principles; and, among others, establishes as an equitable rule, that where a pension is granted to the *children*, it ought to continue until they attain the age of twenty-one years. As the act is not only prospective, but retrospective, in its operation, I think it equitable in itself, and fully warranted by the liberal construction which should be given to such a law, to pay to those children, whose pensions expired under former laws at an earlier age

than twenty-one, the half pay for the balance. I am accordingly of opinion that the claim of Miss Grennell is authorized by the late act.
[Opinion of Attorney-General, April 10, 1837.]

In answer to the question proposed in your letter of the 24th ult., I have the honor to inform you, that, as Captain Joseph Bainbridge left no widow, but left an only child, then under the age of twenty-one, who is yet living, though now over that age, I am of opinion that such child is entitled to a pension, under the act of the 3d of March, 1837, from the death of her father to the time when she attained the age of twenty-one. This result is in accordance with the rules already settled by me in the interpretation of this law.

[Opinion of Attorney-General, April 11, 1837.]

It appears from the papers enclosed in your letter of the 8th instant, that Commodore Samuel Barron died in the year 1810, leaving a widow and two children (a son and daughter) of tender age; that his widow died in 1818; that the son, Lieutenant Barron, of the navy, is yet living, and is now 28 years of age; that the daughter died in 1821, being then 23 years of age, leaving one child, (a daughter,) who is yet living, and now the wife of G. W. Camp; and that the son and granddaughter now claim a pension under the act of the 3d of March last, "for the more equitable administration of the navy pension fund." On the validity of this claim you ask my opinion.

In accordance with the decisions already made on this law, I am of opinion that the son of Commodore Barron will be entitled to one-half of the pension given by it from his father's death to the death of his sister; and to the whole pension from that time to the time when he arrived at the age of 21 years; provided (as I presume was the fact) no pension was received by his mother. On the other hand, it is evident that Mrs. Camp, the granddaughter, is not entitled by the terms of the law; because the pension, in the event of there being no widow, is confined to the *children* of the decedent; and, when received by them, is to cease on their death, or on their attaining the age of 21 years. Grandchildren are thus plainly excluded. According to the opinion expressed by me in the case of the personal representatives of Mrs. Murray, the widow and daughter of Commodore Barron, having each died before the passage of the law, had no right which they could transmit to their personal representatives; and consequently Mrs. Camp's claim is, in this respect, also invalid.

[Opinion of Attorney-General, April 12, 1837.]

The communication of the Commissioner of Pensions, under date of the 12th, transmitted with yours of the 13th instant, has been considered, and I am of opinion that the second section of the act of August 23, 1842, operates a total repeal of the first section of the act of March 3, 1837, and that the case recently presented to the Commissioner of Pensions cannot therefore be entertained by him.

The effect of the act of August 16, 1841, was temporarily to continue in force the act of March 3, 1837, in regard to a class of claims to which that now before the Commissioner clearly belonged, but which not having been preferred within the period limited by that act, and the whole power conferred on the Commissioner of Pensions by the original act having been revoked by the repealing law, can now be allowed by Congress alone. The case is an equitable one, for which, upon a proper application to the legislative branch of the government, provision would doubtless be made.

[Opinion of Attorney-General, April 15, 1844.]

This decision was reversed by Secretary Ewing, on the ground that the pension acts confer vested rights, and that consequently all repeals of them are prospective, but do not extinguish any claim which may have arisen while they were in existence.

The present Secretary has, however, reinstated the rule established by the Attorney-General.

Act of 1845.

In your communication of the 14th instant, you request my opinion on a question submitted to you by the Commissioner of Pensions in relation to the proper construction of the naval pension act of 3d March, 1845. The Commissioner states the question to be: "Whether the pensions granted by this act shall commence when the last five years' pensions ended, or when the last pensions, under the act of 1837, were paid to the pensioners respectively." The act of 3d March, 1845, embraces only the cases of those widows whose husbands have died under circumstances to entitle them to pensions under the provisions of the pension act of 30th June, 1834. Pensions granted by that act terminated in 1839. By the act of 1837, a provision was made for pensions to widows of officers, seamen, and marines, who had died in the naval service, without specifying the mode of the death. Its terms were more comprehensive, and embraced many cases which were not within the provisions of the act of 1834; while those entitled under the act of 1834 were clearly entitled under the act of 1837; and many thus entitled applied and received the benefits of this act. The question submitted depends on the inquiry whether the act of 1837 may be regarded as a renewal of the pensions previously granted. If it be not so construed, a widow whose pension expired in 1839, granted under the act of 1834, may have received, under the act of 1837, her pension, by reason of the death of her husband, from the 30th June, 1839, to 31st August, 1842; and by the act of the 3d March, 1845, receive the same pension for the same cause, during the same time; thus receiving a double pension for the same period of time. This cannot be presumed to have been the intention of Congress; nor will such a construction give effect to the proviso to the act under consideration. I am, therefore, of opinion that the act of 1837 was a renewal of the pensions pre-

viously granted for five years, within the meaning of the act of 3d March, 1845; and that widows' pensions, under this act, shall commence from the period at which they ceased, whether under the act of 1834, or that of 1837, or the act of the 16th August, 1841.

[Opinion of Attorney-General, March 19, 1845.]

I have considered the general question presented in your letter of the 10th instant, as to the effect of the act of March 3, 1845, renewing certain naval pensions for the term of five years, and its application to the particular case of Mrs. Ann J. Ross, widow of Lieutenant Ross of the marine corps, who was killed in battle with the Seminole Indians in the month of December, 1836, the facts of whose case are set forth in the letter addressed by the Commissioner of Pensions to the Secretary of the Navy on the 3d instant. In the letter which I had the honor to address to you on the 19th ultimo, I expressed the opinion that the act of 1837 was a renewal of the pensions previously granted to widows entitled under the act of 1834 within the meaning of the act of March 3, 1845. By the death of her husband in battle, Mrs. Ross was entitled under the act of 1834. The fact of her being placed on the pension roll by virtue of the more comprehensive terms of the act of 1837, does not affect her rights under the act of March 3, 1845. The purpose of Congress was manifestly to extend a pension for five years to those widows who had previously received pensions in consequence of the death of their husbands, (being officers, seamen, and marines,) who had been killed in battle, or who had died by reason of a wound received in the line of their duty, or who had died from disease contracted, or of a casualty by drowning or otherwise, or of injury received, while in the line of their duty. This intention would be defeated in cases of the most meritorious character, if the words employed be construed to embrace only such cases of pension as were granted for five years. The terms of the act are fully satisfied by extending its provisions to cases which were within the act of 1834, although the pensions were granted for an indefinite period; and I am of opinion that this may be done whether the pensions were granted by the Commissioner of Pensions under the act of 1834, or under that of 1837, provided the pension granted would have been authorized by the act of 1834. Mrs. Ross is, therefore, entitled to the benefit of the act of March 3, 1845, subject to its restriction.

[Opinion of Attorney-General, April 14, 1845.]

I had the honor to receive your letter of the 2d ult., requesting my opinion on the claims of Elizabeth E. Chandler and Catharine L. Armistead, for a renewal of their pensions, under the act of March 3, 1845. By that it is provided "that the pensions for the period of five years, which have been heretofore granted out of the naval pension fund to the widows of officers, seamen, and marines, who have been killed, or died by reason of a wound received in the line of their duty, or who have died by reason of disease contracted, or of a casualty by drowning or otherwise, or of injury received while

in the line of their duty, and which pensions have ceased in consequence of the expiration of the period for which they were originally granted, or for which they were subsequently renewed, shall be continued for another period of five years to such of said widows as may have remained unmarried, to commence from the day on which such pensions respectively terminated." According to the statement contained in your letter, the husband of Mrs. Chandler died in July, 1841, of a disease contracted while he was in the performance of his duty. She was, therefore, entitled to a pension either under the law of 1834 or that of 1837; the language of both acts including her case. She received a pension under the latter, commencing from the date of her husband's death, and continuing until August, 1842—a period of one year and a month, when the law of 1837 was repealed. It was subsequently decided by the department that in all cases where a widow who was equally entitled under the law of 1834 had received her pension under the act of 1837 for a less period than five years, and by the repeal of that law had been cut short of her five years' pension, might still be pensioned for the remainder of the term under the law of 1834. Under this decision Mrs. Chandler's pension for the residue of her term was renewed on the 11th day of March, 1845, to take effect from August, 1842, and expired in July, 1846. The case of Mrs. Armistead is similar in all respects necessary to be considered in the decision of the question submitted. Her husband died on the 14th day of April, 1841; and on the 17th day of July following she was allowed a pension under the act of 1837, after the repeal of that law; being within the class of widows entitled to a five years' pension under the act of 1834. A pension certificate was issued in her favor under that law on the 16th day of May, 1845. Her pension commenced from the 14th of April, 1841; but the amount previously paid her under the act of 1837 was directed to be deducted. Her five years expired on the 14th of April, 1846. Upon this statement of facts the question submitted by you for my consideration is whether Mrs. Chandler and Mrs. Armistead may now have properly the benefit of the act of the 3d of March, 1845, as widows whose pensions had expired at the time the act passed; or whether they are concluded by the renewal of their pensions and the receipt of the same, under the act of 1834, subsequent to the passage of the law of 1845. It is very clear that the act of the Commissioner of Pensions, in renewing their certificates, cannot change the law, or in any respect impair their rights, if any they have, to claim the bounty of the government under that act. And it is not less clear that the receipt of the periodical payments, secured by the certificates, is equally inefficacious to any such result. The true construction of the act took date from its passage, uninfluenced by any extraneous circumstances or subsequent event. Its meaning must be gathered from its language, in connexion with the general system of legislation upon the same subject matter. While, therefore, I am of opinion, after a careful examination of the act in question, that the cases of Mrs. Chandler and Mrs. Armistead do not come within its provisions, it is

proper to remark that my opinion is not based in any respect upon the ground assumed in the inquiry submitted, that these parties are estopped or concluded by any act or event subsequent to the passage of the act under which they now claim. That doctrine cannot be sustained; nor is it necessary to invoke it in this case. Neither of the cases submitted is provided for in the terms of the law relied upon in their behalf. The act, you will observe, is confined to cases where widows have already enjoyed a five years' pension under previous laws, and which had ceased in consequence of the expiration of the period for which it had been granted or renewed.

When the law of 1845 went into operation, neither Mrs. Chandler nor Mrs. Armistead had been a widow for the period of five years. The husband of the former died in July, 1841, and that of the latter on the 14th of April previous. Both, therefore, were then entitled to an unexpired portion of their first five years under the act of 1834. Neither had exhausted their five years' pension under a law then in full force. It is true they were not in the actual receipt of the money; they had not obtained their certificates, as no decision had been made by the proper department. The answer to this is readily given. The act under consideration is not based upon the action of the department, but upon the previous statutes *in pari materia*, especially upon the law of 1834. They were entitled by an existing law; and if entitled, then their pensions had not ceased within the language or spirit of the act of 1845. Their first five years had not expired. The act gives another term of five years to those only whose primary right, whether by original grant or renewal, had ceased in consequence of the expiration of the period for which they were originally granted or renewed. The continuation is extended to those pensions only which have been theretofore granted for the period of five years, to commence from the day on which such pensions respectively terminated. The language is too plain, it seems to me, to admit of a doubt, that Congress intended to include such cases only as had actually expired at the date of the law. No other construction can be given short of downright legislation. The terms of the act apply so explicitly to past cases, that it cannot be made to include such as have expired since its passage. No provision being made for future cases, they must be left to the justice of Congress, where I have no doubt an appeal might well be made in behalf of all similar claimants.

[Opinion of Attorney-General, January 23, 1847.]

Act of 1848.

I think the first section of the act renewing certain naval pensions, &c., passed August 11, 1848, is not to be regarded as embracing only those widows and children to whom pensions had been granted, in single instances, by private acts. Such a restricted construction is obviously opposed to the intention of Congress. The description of the first class is in these words, viz: "all those widows and such child or children as are now receiving a pension under any of the

laws of Congress passed prior to the 1st of August, 1841." The words are, "any of the laws," not "*private laws*," as it would have been, if such only were intended. The exception which follows shows the same intention, because the excepted law passed on the 3d March, 1837, was one of the broadest and most general pension laws which had been enacted; and there was no room for the exception, unless it was included in the general description of the persons entitled to the renewal. This is quite decisive of what was in the mind of the legislature. The description of the other class entitled to the renewal is equally general—"those widows and children who have received pensions at any time within five years prior to the passage of this act." All these persons are, by the express words, within the purview of the act, and are declared to be entitled to a renewal. But then comes the supposed restriction, which by a violent construction would throw out the greater part—almost all who had before been included by a precise and definite description: they "may and shall continue to receive the same amount as they have received under any special act from the time such special act expired." The word "special" here does not mean "private," but particular. I think the word is used in that sense. It comports with the general tenor and language of the whole section. The other sense of which the word in another connexion would be susceptible, would, if applied to it here, overturn and control all the other language used in the direct description of the persons intended, explicit and unequivocal as it is, contrary to the apparent intention of Congress.

As to the question under the 2d section, there might be more room for doubt. In enacting that "the pension of a first assistant engineer" shall be "the same as that of a lieutenant of marines, and the pension of the widow of a first assistant engineer the same as that of the widow of a lieutenant of marines," Congress seems to have lost sight of the fact that there was a second lieutenant of marines, and might therefore be supposed to have referred to the first lieutenant only. But, in common parlance, "the lieutenant," without further designation, whether of marines or of infantry, would universally be understood to mean the senior lieutenant and not the second lieutenant; and this familiar and reasonable rule—the meaning of language in common use, which is always a most sure guide to the true legislative intent—may be applied in this instance, where the law seems to have been enacted without a minute or particular attention to the previously existing law.

[Opinion of Attorney-General, September 6, 1843.]

A widow was pensioned under the act of March 3, 1837, which was repealed by another in August, 1842, when her pension expired. On the 16th May, 1845, she was pensioned under the act of June 30, 1834, deducting what she had received under that of 1837. Her five years expired on the 14th April, 1846. She applied for the benefits of the acts of March 3, 1845, and March 3, 1847. The Pension Office rejected the application on the ground that, under the 3d March,

1845, no one could claim whose pension expired after its passage. On appeal, it was decided that as the last mentioned act was in existence when she was placed under the act of 1834, she should be allowed the benefit of the act of 1845; her pension to commence on the 1st September, 1842, and to be renewed under the 11th August, 1848.

[Secretary of the Interior, case of Catharine L. Armistead.]

FORM OF APPLICATION FOR WIDOW'S NAVY PENSION.

To the Commissioner of Pensions:

The memorial of the undersigned,, the widow of, who was a in the Naval service of the United States, respectfully sheweth:

That the said entered the service in the year, and died therein, while holding the rank above mentioned, on the (a)..... by reason of (b)..... in the line of duty.

That the undersigned was married to the said, on the day of, in the year, and that the following is a correct statement of the name... and age... of the child... of such parties now living: (c).....

That your memorialist remain... unmarried, and widow of the said, to the, and referring to the evidence filed (d)....., claims the benefit of the laws granting Navy pensions to the widows of Officers, Seamen, and Marines, who have died in the Naval service, and requests that her name may be inscribed on the roll of pensioners, payable at the Navy Pension Agency, (e)

Sworn and subscribed before me on this day of, in the year

PENSION OFFICE, *May 23, 1853.*

SIR:—For your information, I enclose a form of application for widow's Navy pension, together with a printed sheet exhibiting the description of evidence furnished to this office under the General Order of the 17th February, 1851, in every case of disability or death in the Naval service.

In all claims for widow's pension, or renewal thereof, it must be shown by evidence, accompanying the application, or already on file, that the husband lost his life while in the Naval service, by reason

(a) State date, and whether on board ship or in hospital, and at what place or station.
(b) State whether by wounds, injuries received, casualties incurred, or disease contracted.

(c) Insert names and ages of children.

The memorial should be accompanied by the certificate of the magistrate and the affidavit of credible witnesses, showing the identity and widowhood of memorialist.

The official character of the magistrate must in every instance be certified by the clerk of the county under his seal of office.

(d) Herewith, or already on file in the Pension Office.

(e) Insert location of Agency.

of wounds or injuries received, casualty incurred, or disease contracted in the line of duty. In cases of date subsequent to that of the General Order, such evidence may generally be found here; but if of prior date, must, if practicable, be furnished by the certificates of medical or other commissioned officers of the Navy, cognizant of the facts. If, after using due diligence, such certificates cannot be obtained, the applicant can then present such other testimony as would be taken in a court of justice.

The usual legal proof of marriage must be produced, accompanied by a statement of the names and ages of all children of the parties, whether the fruit of their own or of former marriage. This last is to be desired, not only as a security to the Government, but as facilitating any future claim on the part of the children.

The widowhood and identity of the applicant should be stated in the memorial, and certified by the officiating magistrate, or established by the affidavit of credible witnesses; and all evidence (excepting the official certificates of Naval officers) must be given by affidavit before a magistrate, whose official character shall be certified by the clerk of the county (in which he acts) under his seal of office.

Applications for Orphans' Navy Pension may be made in the following cases: —

1. Death of mother before the father.
2. Death of mother since the father, but without having received the benefit of the pension laws.
3. Death or intermarriage of their mother since having received such benefit.

In the 1st and 2d cases, the same testimony would be required as in widows' applications, together with legal proof of the names and ages of the children.

In the 3d case, the latter only.

Orphans' applications can be made by the legally appointed guardian, in any form embracing a statement of facts. Claims for arrearages of pension may be paid to the orphans themselves, if adults, or to an administrator, for the sole and exclusive use and benefit of the children of the deceased parties.

FORM OF APPLICATION OF A WIDOW IN ORDER TO RENEW HER PENSION, UNDER THE ACT OF

To the Commissioner of Pensions :

The memorial of the undersigned, the widow of the late, who was a in the navy of the United States, respectfully shows :

That her husband, the aforesaid, entered the service of the United States in the year ; that, while in the said service, and

holding the rank above mentioned, he departed this life, at (a) on the day of, in the year; that the undersigned was married to the said on the day of, in the year, and in proof thereof, she refers to papers on file in the Pension Office, upon which she obtained a pension for five years. She therefore claims the benefits of the act of Congress of the, granting pensions to the widows of officers, seamen, and marines, who have died in the service aforesaid; and she requests that her name may be inscribed on the roll of pensioners under that law, who are paid at, in the State of

Sworn to and subscribed before me, on this day of, in the year

[The certificate of official character and signature of the magistrate who may administer the oath to be here subjoined.]

(a) If at a navy yard, the fact must be stated, and the name of the navy yard; if on board of a vessel of war, the name of the vessel must be given.

PART VI

BOUNTY LAND LAWS.

No. 1.

IN BEHALF OF OFFICERS AND SOLDIERS OF THE REVOLUTION WHO ENGAGED FOR THE WAR.

To provide for the raising of eighty-eight battalions to serve for the war.

Resolved, That, in addition to a money bounty of twenty dollars to each non-commissioned officer and private soldier, Congress make provision for granting lands, in the following proportions, to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be slain by the enemy. Such lands to be provided by the United States; and whatever expense shall be necessary to procure such land, the said expense shall be paid and borne by the States, in the same proportion as the other expenses of the war, viz: to a colonel, five hundred acres; to a lieutenant-colonel, four hundred and fifty acres; to a major, four hundred acres; to a captain, three hundred acres; to a lieutenant, two hundred acres; to an ensign, one hundred and fifty acres; each non-commissioned officer and soldier, one hundred acres.

[Resolution—In Congress, September 16, 1776.]

Resolved, That the bounty and grants of land offered by Congress, by a resolution of the 16th instant, as an encouragement to the officers and soldiers to engage to serve in the army of the United States during the war, shall extend to all who are, or shall be, enlisted for that term; the bounty of ten dollars, which any of the soldiers have received from the continent on account of a former enlistment, to be reckoned in part payment of the twenty dollars offered by the said resolution: That no officer in the continental army be allowed to hold more than one commission, or to receive pay but in one capacity, at the same time.

[Resolution—In Congress, September 18, 1776.]

Resolved, That the provision for granting lands, by the resolution of September sixteenth, one thousand seven hundred and seventy-six, be, and is hereby, extended to the general officers, in the following proportion: to a major-general, one thousand one hundred acres; to a brigadier-general, eight hundred and fifty acres.

[Resolution—In Congress, August 12, 1780.]

Congress resumed the consideration of the report of the committee on the Medical Department; and, on the consideration of the following, it was

Resolved, That the several officers of the Medical Department, except the clerks and stewards, shall, at the end of the war, be entitled to a certain provision of land, in the proportion following, to wit: The director to have the same quantity as a brigadier-general; chief physicians and purveyor the same as a colonel; physicians and surgeons, and apothecary, the same as a lieutenant-colonel; regimental surgeons and assistants to the purveyor and apothecary, the same as a major; hospital and regimental surgeons' mate, the same as a captain.

[Resolution—In Congress, September 22, 1780.]

On the 3d October, 1780, Congress reorganized the army, the effect of which was to throw many of the officers out of service. They therefore, at the same time, adopted the following

RESOLUTION.

And whereas, by the foregoing arrangement, many deserving officers must become supernumerary, and it is proper that regard be had to them:

Resolved, That from the time the reform of the army takes place, they be entitled to half pay for seven years, in specie or other current money equivalent, and also grants of land at the close of the war, agreeably to the resolution of the 16th of September, 1776.

The government organised under our present Constitution has made provision for redeeming the promises of the Continental Congress in this regard, and the officers and soldiers, (or, in the event of their death, their heirs,) who have not yet received the Bounty Land thus promised them, can still obtain it.

REGULATIONS FOR THE OFFICERS AND SOLDIERS OF THE REVOLUTIONARY WAR WHO ACQUIRED A RIGHT TO LAND FROM THE UNITED STATES, BUT HAVE NOT RECEIVED IT.

By an act of Congress, of the 16th September, 1776, it is provided, that the officers and soldiers who engaged for, and continued to serve, during the war, or until discharged by Congress, shall receive land in proportion to their rank.

N. B.—Those who engaged for three years, or for any other period than during the war, are not entitled to land from the United States.

The following declaration must be filled up and sworn to by the claimant:

State of }
 County of } ss.

I,, aged years, do upon oath testify and declare, that, I entered the service of the United States on the day of, in the year 17..., for the term of years, and that I served in the company commanded by, in the regiment No., commanded by, of the line, and was honorably discharged on, in the year 17..., from the regiment commanded by

I further declare, that I have never received a warrant for the Bounty Land promised to me on the part of the United States; nor have I ever assigned or transferred my claim in any manner whatsoever: therefore,

KNOW ALL MEN BY THESE PRESENTS, That I, aforesaid, do hereby constitute and appoint to be my true and lawful attorney, for me and in my name to demand and receive from the Secretary of War of the United States, a warrant for the quantity of land due to me as aforesaid; and my said attorney is hereby fully authorized and empowered to constitute and appoint one or more substitutes or attorneys under him for the special purposes above expressed.

Attest,

.....

I,, aged years, do upon oath, declare that I have been long acquainted with, who has subscribed the above declaration in my presence, and well know that he is the identical person he therein represents himself to be; and further, I do believe, that he did perform the military service therein stated.

Attest,

.....

Before me,, personally appeared the above named, subscriber to the foregoing declaration, and in my presence acknowledged the power of attorney thereto subjoined, to be his free act and deed; and, likewise, personally appeared, who hath subscribed the above certificate of identity, both to me well known to be men of respectability and truth, and made solemn oath to the truth of the depositions by them respectively subscribed, this day of, 18...

....., *Justice of the Peace,*

In testimony that the above-written was a magistrate authorized to administer oaths, and take acknowledgments, &c., in the State of, at the above date, and that his name there subscribed appears to me to be his usual signature, I have hereunto affixed the county seal, and subscribed my name and quality, at, this day of, 18...

....., *Clerk, &c.*

Should the party apply directly, he will omit the power of attorney.

A Revolutionary Bounty Land claim descends to heirs general, and will be applied for after the following form:

REGULATIONS FOR THE HEIRS OF OFFICERS AND SOLDIERS OF THE REVOLUTIONARY ARMY, WHO WERE SLAIN BY THE ENEMY, OR WHO HAVE DIED SINCE THE WAR, AND HAVE NOT RECEIVED LAND FROM THE UNITED STATES.

By an act of Congress of the 16th September, 1776, it is provided that the officers and soldiers of the army upon the continental establishment, who engaged for, and continued to serve, during the war, or until discharged by Congress, and the heirs of such officers and soldiers as shall be slain by the enemy, shall receive land in proportion to their rank.

N. B.—Those who engaged for three years, or for any other period than during the war, or who died of sickness, fatigue, or casualty, are not entitled to land from the United States.

The following declaration (and enclosed blank form of heirship) must be filled up and signed by the proper authorities.

State of }
County of } ss.

I,, heir at law of, do, upon oath, testify and declare, to the best of my knowledge and belief, that did enter the service in 17..., for the term of and served as a in the Regiment No., under the command of Colonel, of the line; and that he continued in the service aforesaid until

I further declare that I have never received a warrant for the bounty land promised to on the part of the United States; nor do I believe that he ever received it, or transferred his claim to it in any manner whatsoever:

KNOW ALL MEN BY THESE PRESENTS, That I, aforesaid, do hereby constitute and appoint to be my true and lawful attorney, for me, and in my name, to demand and receive from the Commissioner of Pensions, a warrant for the quantity of land due to me as aforesaid; and my said attorney is hereby fully authorized and empowered to constitute and appoint one or more substitutes or attorneys under him, for the special purposes above expressed.

Attest,

.....

Personally appeared the above named, subscriber to the foregoing declaration, and made oath to the same, and in my presence acknowledged the power of attorney thereto subjoined to be free act and deed, for the purposes therein mentioned.

Attest,

....., *Justice of the Peace.*

In testimony that the above written was a magistrate authorized to administer oaths, and take acknowledgments, &c., in the State of at the above date, and that his name there subscribed appears to me to be his usual signature, I have hereunto affixed the county seal, and subscribed my name and quality, at this day of, 18...

....., *Clerk, &c.*

Should the heirs not apply through an attorney, of course the power in the above form will be omitted.

No. 2.

FOR NON-COMMISSIONED OFFICERS AND SOLDIERS OF THE WAR OF 1812, ENLISTED FOR FIVE YEARS OR THE WAR.

An act for completing the existing military establishment.

SEC. 2. *And be it further enacted*, That there be allowed and paid to each effective and able-bodied man, recruited or re-enlisted for that service, for the term of five years, unless sooner discharged, the sum of sixteen dollars; and * * * * whenever any non-commissioned officer or soldier shall be discharged from the service, who shall have obtained from the commanding officer of his company, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall, moreover, be allowed and paid, in addition

to the aforesaid bounty, three months' pay, and one hundred and sixty acres of land; and the heirs and representatives of those non-commissioned officers or soldiers, who may be killed in action, or die in the service of the United States, shall, likewise, be paid and allowed the said additional bounty of three months' pay, and one hundred and sixty acres of land, to be designated, surveyed, and laid off, at the public expense, in such manner, and upon such terms and conditions as may be provided by law.

[Approved, December 24, 1811.]

An act to raise an additional military force.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be immediately raised ten regiments of infantry, two regiments of artillery, and one regiment of light dragoons, to be enlisted for the term of five years, unless sooner discharged.

SEC. 12. *And be it further enacted,* That * * * whenever any non-commissioned officer, or soldier, shall be discharged from the service, who shall have obtained from the commanding officer of his company, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall moreover be allowed and paid * * * one hundred and sixty acres of land; and the heirs and representatives of those non-commissioned officers or soldiers who may be killed in action, or die in the service of the United States, shall likewise be paid and allowed * * * one hundred and sixty acres of land; to be designated, surveyed, and laid off, at public expense, in such manner, and upon such terms and conditions, as may be prescribed by law.

[Approved, January 10, 1812.]

An act authorizing the President of the United States to accept and organize certain volunteer military corps.

The first section authorizes the President to accept of any company or companies of volunteers, either of artillery, cavalry, or infantry, who may associate and offer themselves for the service, not exceeding 50,000 men.

The second section prescribes that any company, battalion, regiment, brigade or division, thus offering itself for the service, shall be liable to be called upon to do duty at any time the President may deem it necessary, within two years after the offer, and shall be bound to continue in service for the term of twelve months after they shall have arrived at the place of rendezvous, unless sooner discharged.

SEC. 6. *And be it further enacted,* That the heirs and representatives of any non-commissioned officer or soldier, who may be killed in action, or die in the actual service of the United States, shall be entitled to receive one hundred and sixty acres of land; to be designated, surveyed, and laid off at the public expense, in such manner, and upon such terms and conditions as may be provided by law.

[Approved, February 6, 1812.]

An act in addition to the act entitled "An act to raise an additional military force," and for other purposes.

SEC. 18. *And be it further enacted,* That the act, entitled "An act authorizing the President of the United States to accept and or-

ganize certain volunteer military corps," and the act, entitled "An act supplementary to the act, entitled 'An act authorizing the President of the United States to accept and organize certain volunteer military corps,' " be, and the same are hereby repealed, from and after the first day of February next: *Provided*, That nothing herein contained shall be so construed as to deprive the officers and men who may have entered the service as volunteers, under the said acts, of any rights, immunities, or privileges therein secured, or the United States of the services of such volunteers, agreeably to the provisions of said acts.

[Approved, January 29, 1813.]

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be immediately raised ten regiments of infantry, two regiments of artillery, and one regiment of light dragoons, to be enlisted for the term of five years, unless sooner discharged. * * * *

SEC. 12. *And be it further enacted*, That there shall be allowed and paid to each effective able-bodied man, recruited as aforesaid, to serve for the term of five years, a bounty of sixteen dollars; but the payment of eight dollars of the said bounty shall be deferred until he shall be mustered, and have joined some military corps of the United States for service. And whenever any non-commissioned officer, or soldier, shall be discharged from the service, who shall have obtained from the commanding officer of his company, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall, moreover, be allowed and paid, in addition to the said bounty, three months' pay, and one hundred and sixty acres of land; and the heirs and representatives of those non-commissioned officers or soldiers who may be killed in action, or die in the service of the United States, shall likewise be paid and allowed the said additional bounty of three months' pay, and one hundred and sixty acres of land; to be designated, surveyed, and laid off, at the public expense, in such manner, and upon such terms and conditions, as may be provided by law.

[Approved, January 11, 1812.]

An act to provide for designating, surveying, and granting, the military bounty lands.

SEC. 4. *And be it further enacted*, That no claim for the military land bounties aforesaid shall be assignable or transferable in any manner whatever, until after a patent shall have been granted in the manner aforesaid. All sales, mortgages, contracts, or agreements, of any nature whatever, made prior thereto, for the purpose or with intent of alienating, pledging, or mortgaging any such claim, are hereby declared and shall be held null and void; nor shall any tract of land, granted as aforesaid, be liable to be taken in execution or sold on account of any such sale, mortgage, contract, or agreement, or on account of any debt contracted prior to the date of the patent, either by the person originally entitled to the land, or by his heirs or legal representatives, or by virtue of any process, or suit at law, or judgment of court, against a person entitled to receive his patent as aforesaid.

[Approved, May 6, 1812.]

An act supplementary to the act entitled "An act for the more perfect organization of the army of the United States."

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint one additional major to the first regiment of light dragoons, the regiment of light artillery, each regiment of infantry, and the rifle regiment, in the army of the United States, who shall receive the like pay, rations, forage, and other emoluments, as officers of the same grade and corps of the present military establishment. * * *

SEC. 4. *And be it further enacted*, That, in order to complete the present military establishment to the full number authorized by law, with the greatest possible dispatch, there shall be paid to each effective able-bodied man, who shall be duly enlisted into the service of the United States, after the first day of February next, to serve for the term of five years, or during the war, an advance of twenty-four dollars, on account of his pay, in addition to the existing bounty; one-half of such advance to be paid at the enlistment of the recruit, and the other half when he shall be mustered and have joined some military corps of the United States, for service; and a bounty of one hundred and sixty acres of land, as heretofore established by law.

[Approved, January 20, 1813.]

An act to amend the "Act in addition to the act entitled 'An act to raise an additional military force, and for other purposes.'"

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That five of the regiments which were authorized to be raised by "An act in addition to the act entitled 'An act to raise an additional military force, and for other purposes,'" * passed the twenty-ninth day of January, one thousand eight hundred and thirteen, may, at the discretion of the President of the United States, be enlisted for and during the war, unless sooner discharged, and be limited, as to service, to the defence of the seaboard of the United States, or of such part thereof as the President may elect and determine."

SEC. 2. *And be it further enacted*, That each man recruited under the authority of this act, be allowed the same bounty, in money and land, as is allowed by law to men enlisted for five years, or for the war; and that the officers, non-commissioned officers, musicians, and privates, shall receive the same pay, clothing, subsistence, and forage, be entitled to the same benefits, be subject to the same rules and regulations, and be placed, in every respect, on the same footing as the other regular troops of the United States.

[Approved, July 5, 1813.]

* This act provides for raising a number of regiments, not to exceed twenty, to serve one year, and to receive all the emoluments of the then existing military establishment—the land and bounty excepted.

An act to authorize the President to receive into service certain volunteer corps.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and he is hereby, authorized to receive into the service of the United States such proportion of the volunteers, authorized by the act of sixth February, one thousand eight hundred and twelve, and the act supplementary thereto, of the sixth July, one thousand eight hundred and twelve, and accepted under the authority of said acts, as, in his judgment, the public service may require: *Provided*, That the volunteers so received shall engage to serve for five years, or during the war, unless sooner discharged.

SEC. 2. *And be it further enacted*, That the volunteers which shall be taken into service under the authority of the preceding section, shall be entitled to the same bounty, pay, rations, clothing, forage, and emoluments of every kind, and to the same benefits and allowances, as the regular troops of the United States.

SEC. 3. *And be it further enacted*, That the officers of corps of volunteers which shall be taken into service, shall rank, according to grade and the dates of their commissions or appointments, with other officers of the army.

[Approved, February 24, 1814.]

An act making further provision for filling the ranks of the army of the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passing of this act, each and every commissioned officer who shall be employed in the recruiting service shall be, and he hereby is, authorized to enlist into the army of the United States, any free, effective, able-bodied man, between the ages of eighteen and fifty years; which enlistment shall be absolute and binding upon all persons under the age of twenty-one years, as well as upon persons of full age; such recruiting officer having complied with all the requisitions of the laws regulating the recruiting service. * * *

SEC. 4. *And be it further enacted*, That in lieu of the bounty of one hundred and sixty acres of land, now allowed by law, there shall be allowed to each non-commissioned officer and soldier hereafter enlisted, when discharged from service, who shall have obtained from the commanding officer of his company, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, three hundred and twenty acres of land, to be surveyed, laid off, and granted under the same regulations, and in every respect in the same manner now prescribed by law; and the widow and children, and if there be no widow nor child, the parents of every non-commissioned officer and soldier, enlisted according to law, who may be killed or die in the service of the United States, shall be entitled to receive the three hundred and twenty acres of land as aforesaid; but the same shall not pass to collateral relations, any law heretofore passed to the contrary notwithstanding.

SEC. 5. *And be it further enacted*, That any person subject to militia duty, who shall, according to law, furnish a recruit for the

army of the United States at his own expense, during the war, shall thereafter be exempt from militia duty during the war; and every recruit thus furnished shall be delivered to some recruiting officer of the United States, who shall immediately grant his receipt for such recruit, to the person furnishing him, and shall forthwith report the same to the Department of War, and shall specify in the report the name of such person, and his place of residence, as well as the name and description of the recruit; whereupon it shall be the duty of the Secretary for the Department of War to grant to the person furnishing such recruit a certificate of exemption from militia duty during the war, upon calls made upon authority of the United States, which certificate shall be good and available to all intents and purposes for that object; and every recruit thus furnished shall be entitled to the bounty land, in the same manner, and upon the same conditions as the other recruits in the army of the United States.

[Approved, December 10, 1814.]

An act making further provision for military services during the late war, and for other purposes.

SEC. 3. *And be it further enacted*, That all soldiers who have been enlisted to serve for five years or during the war, and were above the age of forty-five, or under the age of eighteen years, who have faithfully served during the late war, and have been regularly discharged, and the representatives of such soldiers as shall have died whilst in the service of the United States, and all soldiers who have been enlisted and have faithfully served during the late war, until they have been promoted to the rank of commissioned officers, who, if they had served during the war under their enlistment, and been regularly discharged, would have been entitled to a bounty in land, shall be entitled to one hundred and sixty or three hundred and twenty acres of land, according to the term of enlistment; the warrants and patents to issue in the same manner as in the case of soldiers enlisted of proper age, and discharged under similar circumstances.

[Approved, April 16, 1816.]

PRINCIPLES AND DECISIONS RELATING TO BOUNTY LANDS FOR THE WAR OF 1812.

No. 1.

Who entitled.

I think that every non-commissioned officer and soldier enlisted since the 10th of December, 1814, is entitled to a bounty of 320 acres of land, provided that he obtain, on his discharge from service, a certificate from the commanding officer of his company, battalion, or regiment, that he had faithfully performed his duty whilst in service.

[Opinion of Attorney-General, August 1, 1815.]

Mr. Sterling is an applicant for land bounty, under the 3d section of the act of the 16th of April, 1816, entitled "An act making further provisions for military services during the late war, and for other

purposes." He states that he enlisted as a soldier, and served during the late war, until he was promoted to the rank of a commissioned officer, which commission he resigned *before the conclusion of the war*. And the single question presented by his case is, whether that resignation cuts him off from the bounty provided by the section of the act in question; or, in other words, whether, to entitle him to the land bounty, he was not bound to have served *under his commission* until the end of the war?

In considering the just construction of this section, it is observable that it provides for those classes of persons for whom no previous provision has been made, to wit:

1. All soldiers above the age of forty-five, or under the age of eighteen, who had been enlisted to serve for five years or during the war, and who had faithfully served during the war, and had been regularly discharged.

2. The representatives of *such* soldiers as had died whilst in the service of the United States.

3. *All soldiers* who had been enlisted and had faithfully served during the war *until they had been promoted to the rank of commissioned officers*, who, if they had served during the war under their enlistment and had been regularly discharged, would have been entitled to a bounty in land. Under this third provision, the only questions in relation to Mr. Sterling are—

1st. Was his enlistment as a soldier of that character, that if he had served under it during the whole war, and been regularly discharged, he could not have been entitled to the land bounty; *i. e.* was he enlisted for five years, or during the war?

2d. Did he serve under that enlistment *until he was promoted to the rank of a commissioned officer*?

If the facts of the case answer both these questions in the affirmative, he is, in my opinion, clearly entitled to the bounty under this act. To require that he should have served *under his commission till the end of the war*, in order to entitle him, is to require what the act of Congress does not require. If Congress intended the service so to continue, they have not said so. Their words are, "all soldiers who have been enlisted and have faithfully served during the late war, *until they had been promoted to the rank of commissioned officers*." The moment the soldier is so promoted, his right attaches, and he is from that moment placed exactly on the footing of the soldier who had served during the war, and until regularly discharged. Any other construction would render the words "*until they had been promoted to the rank of commissioned officers*" utterly senseless; whereas they are obviously used, and used for the express purpose of marking the very epoch and the event on which the right to the bounty was intended to attach. The policy of the law, I presume, was to promote emulation in the ranks, and to reward the successful competitor.

[Opinion of Attorney-General, July 29, 1819.]

In reply to your inquiry of this morning, I have the honor to state that, in my opinion, a soldier, who during the late war was enlisted

to serve for the term of five years, and was honorably discharged before the expiration of his term of service, in consequence of his having provided a substitute, (who, however, afterwards deserted,) is entitled to one hundred and sixty acres of land from the United States, under the act of Congress of January 11, 1812. The United States, in accepting the substitute, receives what they regard as an equivalent for the services of the soldier; and I do not think that he is responsible for the future conduct of the person thus agreed to be accepted. As soon as he is discharged from service, and obtains the certificate that he has faithfully performed his duty whilst in service, he becomes entitled to the land; and no subsequent contingency can destroy his right. [Opinion of Attorney-General, November 4, 1831.]

No. 2.

Fraud.

A warrant obtained by fraud is of no value to the holder, and I cannot, therefore, conceive any injury which can result from cancelling it. On the contrary, the fraud being fixed, I consider it the duty of the Secretary, both towards the Government and towards society, to disable the warrant from being used as an instrument of further mischief. But, since the evidence which fixes the fraud must, from the necessity of the case, be always *ex parte* in relation to the holder of the warrant, whose character as well as rights are staked on the correctness of the Secretary's decision, I submit as the better course to cancel the warrant in such a way as to incapacitate it for circulation, without rendering it illegible; noting on the warrant, in a few words, the cause of its cancellation, and then handing it back to the person who presented it, to seek any redress to which he may be entitled before the tribunals of his country.

[Opinion of Attorney-General, December 26, 1819.]

The former warrant and patent were issued to an impostor, who personated the proper claimant.

An imposition practised on the department ought not to prejudice an innocent person, who in no way contributed to the wrong done to the public; and I think the son and heir is entitled to a warrant for his bounty lands, notwithstanding a warrant and patent have been heretofore fraudulently obtained by another person for the same lands. [Opinion of Attorney-General, March 19, 1832.]

No. 3.

Bounty land descends and is devisable as real estate.

From the statement before me, I think that Thilia Porter, as the heir and devisee of Lieutenant John Thorp, deceased, is entitled to the bounty lands due to him.

The case is this: John Thorp, at the time of his death, left issue two daughters, Elizabeth Serring and Thilia Porter, who were his

heirs-at-law. The two grandsons mentioned in his will were the children of his daughter, Mrs. Serring.

The bounty land is not expressly devised to any one, nor is there any express general devise of the residue of his real estate. And if there had been nothing in the will to exclude Mrs. Serring from a share of the bounty lands, they would have descended equally to his two daughters, who were his heirs-at-law.

But the testator directs that the devise of certain real and personal estate made to Mr. and Mrs. Serring should go in full satisfaction of all right, title, interest, claim, and demand, whatsoever, which they might or could in any way pretend to have or claim to all or any part of his real or personal estate, except the bequest of the one-half of the residue of his personal estate, which, by a preceding clause in his will, he had given to her.

This strong language of exclusion from everything but the property abovementioned appears to me to be, by necessary implication, a devise to Mrs. Porter, his only remaining heir-at-law, of the share of the residue of his real estate, which, in the absence of this clause of exclusion, would have descended to Mrs. Serring. The bounty lands, not being devised to any one, would be left to descend to the heirs-at-law. And when the testator gives to one of his heirs the one-half of the residue of his personal estate, and excludes her in express terms from any share of the residue of his estate, the portion of that heir in the residue of the real estate is, in my opinion, by necessary implication, given to his remaining heir. And Mrs. Porter is therefore entitled to these lands.

This opinion is expressed under the belief that the will of Mr. Thorp is sufficiently attested to pass real estate, and that his two daughters, Mrs. Serring and Mrs. Porter, were both living at the time of his death. The officer in charge of the Bounty Land Office will, of course, satisfy himself on these points before he acts on this opinion.

[Opinion of Attorney-General, October 25, 1832.]

In reply to your letter of to-day, I have the honor to state that it appears, from the papers before me, that Jacob Brice, of Maryland, who was entitled to the bounty land in question, died many years ago, intestate, leaving a widow and three children; that the children all died intestate and without issue, in the life of the widow; and she died about the year 1817, intestate, without leaving issue, she not having married again. The present applicants for the land make claim to it as her heirs-at-law.

Upon the facts, as set forth in the papers before me, the present applicants do not show themselves entitled to the land. It descended, on the death of Jacob Brice, to his children, and vested by descent in the surviving child. The mother was not the heir of that child, unless there was no representative to be found in the paternal line. And there is no evidence to show that there were not brothers and sisters of Jacob Brice, or some one of kin to him in the paternal line, who was competent to take, upon the death of the surviving child. The claim of the present applicants cannot, therefore, be allowed.

[Opinion of Attorney-General, September 5, 1833.]

No. 4.

Lost or omitted discharge.

An act providing for cases of lost military land warrants and discharges for faithful services.

SEC. 2. *And be it further enacted*, That in all cases of discharges from the military service of the United States, of any soldier of the regular army, when it shall appear to the satisfaction of the Secretary of War that a certificate of faithful services has been omitted by the neglect of the discharging officer, by misconstruction of the law, or by any other neglect or casualty, such omission shall not prevent the issuing of the warrant and patent as in other cases. And when it shall be proved as aforesaid that any soldier of the regular army has lost his discharge and certificate of faithful service, the Secretary of War shall cause such paper to be furnished such soldier of the regular army as will entitle him to his land warrant and patent: *Provided*, Such measure be justified by the time of his enlistment, the period of service, and the report of some officer of the corps to which he was attached.

[Approved, April 27, 1816.]

No. 5.

Free negroes entitled.

Had I been called on, *à priori*, to give a construction to the several acts of Congress which are the subject of Mr. Cutting's letters of the 21st May, 1821, and 30th January, 1823, of Major Charles J. Nourse's of the 20th January, 1823, and Mr. J. W. Murray's of 22d December, 1822, I should have had no hesitation in expressing the opinion that it was not the intention of Congress to incorporate negroes and people of color with the army any more than with the militia of the United States. But the acts of Congress under which this body of people of color are understood to have been raised during the late war uses no other terms of description as to the recruits than that they shall be "effective able-bodied men"—[act 24th December, 1811, "for completing the existing military establishment," and act 11th January, 1812, "to raise an additional military force,"] or "free, effective able-bodied men," [act December 10, 1814, "making further provision for filling the ranks of the army of the United States"]. As either of these descriptions was satisfied by the persons of color, in question; as the recruiting officers, who were *quoad hoc* the agents of the United States, recruited these persons on a contract for the pay and bounty stipulated by law; as the officers of government recognise them as a part of the army, by their regular returns of this corps, who received, till the close of the war, the same pay and rations with other troops, were subject to the same military law, and performed the same military services, it seems to me that a practical construction has been given to the law in this particular, from which it is not in the power of the Government justly to depart. I think, therefore, that they ought to receive the promised land bounty. But without some further and more explicit

declaration of the purpose of Congress, I would not recommend a repetition of such contracts, on any future occasion, on laws worded like those under consideration — by which I mean not merely the three laws which I have cited, but the whole military system of the United States, militia included. The papers are returned.

[Opinion of Attorney-General, March 27, 1823.]

DECLARATION AND REGULATIONS.

There is no prescribed form of declaration, and the applicant may model his after the one given under the Revolutionary act, or may govern himself by the following regulations:

The existing laws providing land bounty to the soldiers of the war of 1812 are applicable to those men only who enlisted in the regular army for "five years," or for "during the war," and were "honorably discharged" or died whilst in service. A surviving soldier of the war of 1812, on his application for bounty land, is required to produce his original discharge, and his oath, duly authenticated, showing that he is the individual mentioned in the discharge; but if the discharge is lost, he must identify himself by his affidavit according to the printed form for that purpose, headed "Form for Lost Discharges."

The heirs of a deceased soldier of the war of 1812, in their application for bounty land, are required to state as explicitly as practicable when and where the soldier enlisted, the name or number of the regiment to which he belonged, the name of his captain, or the names of some of the other officers under whom he served; for this latter purpose no forms are prescribed. The facts, however, must be set forth under oath, and the affidavits must be duly authenticated. The magistrates who may administer the oaths must certify to the credibility of the witnesses, and the official character and signature of the magistrate must be certified by the proper officer under his seal of office.

Heirship must be established by proof taken before a court of record according to the laws of the State in which the heirs reside. The forms will direct the clerk of the courts how to draw up their certificates, to which must be attached their official seals.

County, { ss.

FORM FOR LOST DISCHARGES.

I,, do declare that I was late a, in the company commanded by, of the regiment of; that I was enlisted at by, on the day of, one thousand eight hundred and, for the term of, and served faithfully, until the, one thousand eight hundred and, when I was honorably discharged at, by, on account of, and was last paid by, Paymaster; and my discharge, which duly testified all these particulars, was lost by

Sworn and subscribed before me, this day of, one thousand eight hundred and

N. B. The official attestation of the Secretary of the State, or the County Clerk, or other proper officer, to the *quality* and *signature* of the Magistrate before whom the depositions were taken will be required; excepting, however, when the depositions shall have been made before a *Notary Public*; his official attestation in such case is deemed sufficient; but the certificate of a Notary, to the quality and signature of another Magistrate, is inadmissible.

No. 3.

BOUNTY LAND OR SCRIP

FOR NON-COMMISSIONED OFFICERS AND SOLDIERS OF THE REGULAR
ARMY AND VOLUNTEERS IN THE WAR WITH MEXICO.

An act to raise for a limited time an additional military force, and for other purposes.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in addition to the present military establishment of the United States, there shall be raised and organized, under the direction of the President, for and during the war with Mexico, one regiment of dragoons and nine regiments of infantry, each to be composed of the same number and rank of commissioned and non-commissioned officers, buglers, musicians, and privates, &c., as are provided for a regiment of dragoons and infantry, respectively, under existing laws, and shall receive the same pay, rations, and allowances according to their respective grades, and be subject to the same regulations, and to the rules and articles of war, &c.

SEC. 9. *And be it further enacted,* That each non-commissioned officer, musician, or private, enlisted or to be enlisted in the regular army, or regularly mustered in any volunteer company for a period of not less than twelve months, who has served or may serve during the present war with Mexico, and who shall receive an honorable discharge, or who shall have been killed, or died of wounds received or sickness incurred in the course of such service, or who shall have been discharged before the expiration of his term of service in consequence of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant from the War Department for the quantity of one hundred and sixty acres, and which may be located by the warrantee, or his heirs at law at any land office of the United States, in one body, and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made, to the General Land Office, a patent shall be issued therefor. That in the event of the death of any such non-commissioned officer, musician, or private, during service, or after his discharge, and before the issuing of a certificate or warrant as aforesaid, the said certificate or warrant shall be issued in favor, and inure to the benefit of his family or relatives, according to the following rules: first, to the widow and to his children; second, his father; third, his mother. And in the event of his children being minors, then the legally-constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the Orphans' or other court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested.

And all sales, mortgages, powers, or other instruments of writing, going to affect the title or claim to any such bounty right, made or executed prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes whatsoever, nor shall such claim to bounty right be in any wise affected by, or charged with, or subject to, the payment of any debt or claim incurred by the soldier prior to the issuing of such certificate or warrant: *Provided*, That no land warrant issued under the provisions of this act shall be laid upon any lands of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation: *Provided, further*, That every such non-commissioned officer, musician, and private, who may be entitled, under the provisions of this act, to receive a certificate or warrant for one hundred and sixty acres of land, shall be allowed the option to receive such certificate or warrant, or a treasury scrip for one hundred dollars; and such scrip, whenever it is preferred, shall be issued by the Secretary of the Treasury to such person or persons as would be authorized to receive such certificates or warrants for lands; said scrip to bear an interest of six per cent. per annum, payable semi-annually, redeemable at the pleasure of the government. And that each private, non-commissioned officer, and musician, who shall have been received into the service of the United States, since the commencement of the war with Mexico, for less than twelve months, and shall have served for such term or until honorably discharged, shall be entitled to receive a warrant for forty acres of land, which may be subject to private entry, or twenty-five dollars in scrip, if preferred: and in the event of the death of such volunteer during his term of service, or after an honorable discharge, but before the passage of this act, then the warrant for such land or scrip, shall issue to the wife, child, or children, if there be any, and, if none, then to the father, and, if there be no father, then to the mother of such deceased volunteer: *Provided*, That nothing contained in this section shall be construed to give bounty land to such volunteers as were accepted into service, and discharged without being marched to the seat of war.

[Approved, February 11, 1847.]

An act making land warrants assignable, and for other purposes.

SEC. 4. *And be it further enacted*, * * * * That the last proviso of the ninth section of the act of eleventh of February, eighteen hundred and forty-seven, be and the same is hereby repealed.

[Approved, March 22, 1852.]

Joint resolution relative to the evidence which shall be considered satisfactory in applications for bounty land.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases of application for bounty land warrants under the act approved February eleventh, eighteen hundred and forty-seven, the honorable discharge of the applicant, showing the same was predicated on a surgeon's certificate of disability, shall be considered as satisfactory

evidence to the Commissioner of Pensions that the disability was incurred in the course of service. [Approved, March 24, 1848.]

An act explanatory of the act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," approved eleventh February, eighteen hundred and forty-seven.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the term "relatives," as used in the ninth section of the act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," approved 11th February, eighteen hundred and forty-seven, shall be considered as extending to the brothers and sisters of those persons whose services, under that act, may have entitled them to the land therein provided; the order or priority of right, however, shall remain as declared in that act; and those failing, the right shall accrue, fourthly, to the brother or sister, or in equal proportions to the brothers and sisters of the deceased, as the case may be.

SEC. 2. *And be it further enacted*, That the benefits of the said act of eleventh February, eighteen hundred and forty-seven, shall not be construed as forfeited by the privates and non-commissioned officers who have been, or may be, promoted to the grade of commissioned officers during their service in Mexico, and who shall have subsequently fulfilled the condition of their engagements: *Provided*, Such promotion shall have been made subsequent to the original organization of the company, corps, or regiment to which such privates and non-commissioned officers may have belonged.

[Approved, May 27, 1848.]

No. 4.

BOUNTY LAND FOR MARINES AND ORDNANCE CORPS, IN THE MEXICAN WAR.

Joint resolution concerning certain portions of the marine and ordnance corps.

1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the officers, non-commissioned officers, privates, and musicians, of the marine corps, who have served with the army in the war with Mexico, and also the artificers and laborers of the ordnance corps serving in said war, be placed, in all respects as to bounty land and other remuneration, in addition to ordinary pay, on a footing with the officers, non-commissioned officers, privates, and musicians of the army: *Provided*, That this remuneration shall be in lieu of prize-money and all other extra allowances.

[Approved, August 10, 1848.]

PRINCIPLES AND DECISIONS RELATING TO BOUNTY LAND FOR
SERVICE IN MEXICO.

No. 1.

An election between land and scrip is final.

The papers in the case of David Stutsman, which you referred to me on the 23d instant, present but a single question, which is: Can a discharged soldier, who is entitled either to a certificate for bounty land or treasury scrip under the act of the 11th February, 1847, after he has made his election of the one, and it has been issued to him, surrender the same, and take the other? I think not, under the circumstances of this case.

It appears that the scrip was regularly issued to Stutsman on the 25th September, 1847, in pursuance of an application in writing previously made and signed by the party and subscribing witness. The evidence that he has exercised the "option" secured to him by the second proviso in the ninth section of the act aforesaid, is full and uncontradicted. This being so, and the Commissioner of Pensions having certified that there was no error in the issuance of the scrip, the law is fully executed, and Stutsman must abide by his own decision in the premises. By that proviso the party has but one election; and when that is made known, it becomes the duty of the department to conform to it by issuing the proper evidence of the claim, which completes the proceedings.

[Opinion of Attorney-General, October 30, 1847.]

No. 2.

Who is entitled, and what bars.

A volunteer was honorably discharged by special order of General Taylor.

In the absence of any explanation to the contrary, it is no more than a reasonable inference that the discharge was granted at the request and for the benefit of the party receiving it. The claimant must show that he enlisted, and was regularly mustered into the service, and that he continued in the service for twelve months, and received an honorable discharge, or else that he was discharged on account of wounds received or sickness incurred in the course of his service, before he can claim under the act of 1847.

[Opinion of Attorney-General, March 17, 1848.]

The explanatory act of May 27, 1848, enacts "that the term 'relatives,' as used in the ninth section of the act entitled 'An act to raise, for a limited time, an additional military force, and for other purposes,' approved 11th February, 1847, shall be considered as extending to the brothers and sisters of those persons whose services, under that act, may have entitled them to the land therein provided. The order or priority of right, however, shall remain as declared in that act; and those failing, the right shall accrue, fourthly, to the brother or sister, or in equal proportions to the brothers and sisters

of the deceased, as the case may be. Thomas J. Luxen, entitled to bounty land, died, leaving a brother of the whole-blood and a sister of the half-blood, they being children of the same mother. The question is, whether the children of the same mother, but not of the same father, are brothers and sisters within the meaning of this act of Congress? There is no question here of the descent of ancestral estate. The land, or the money in its stead, is not given to the "heir," which might have created greater doubt; but it is given to the brothers and sisters; and if the half-sister was the sister of the deceased, she is within the description of the persons entitled to take. It cannot be said that she is not a sister; and as the act makes no distinction between the whole-blood and half-blood, she cannot be excluded upon any ground contained in the law itself, and from the nature of the case, the policy of no one or more States can apply here; and there is no general principle of law or policy that can be permitted to vary or control the construction of this section of the act, but the plain import of the words must prevail. I think, therefore, that the sister of the half-blood is entitled to a share.

The claim of John Hasson, late a sergeant in the general recruiting service, to the benefit of the bounty land provided by the 9th section of the act of the 4th February, 1847 (*Session acts*, p. 14), submitted by you to this office, I have carefully considered.

It rests altogether upon what is the proper construction of that section. The facts are these: The claimant was enlisted on the 29th January, 1846, and on the 14th April, 1849, *honorably* discharged. The discharge was made against his wish, and in consequence of the reduction of the army after the termination of the Mexican war. The term of his enlistment was five years.

The Pension Office thinks the claim unfounded, and has so decided. Its interpretation of the section is, that it embraces only those who served out their full term, or were prevented in consequence of wounds, disabilities, or death.

I construe it differently. In my opinion, it embraces three classes:

1st. Those of the regular army enlisted for twelve months or for a longer period; volunteers regularly mustered into a volunteer company, "who have served, or may serve, *during*" the *war with Mexico*, and are then, at the end of the *war*, *honorably* discharged.

2d. Those killed, or dying of wounds received or sickness incurred, "*in the course of such service.*"

3d. Those who are discharged before the expiration of their term of service, "*in consequence of wounds received or sickness incurred in the course of such service.*"

The first class need only to serve *during the war*, and to be *honorably* discharged at its termination, to entitle them to bounty. It is not necessary to show service in the army for the whole period of the enlistment. The second: death from wounds or sickness received or incurred *during service in the war*, and not during the term of enlistment, when that extends beyond the close of the war. Third: those who, by reason of wounds or sickness occurring in the war, are discharged *before the close of the war*.

The view taken by the Pension Office is, that the express provision for this latter class shows that the terms "and who shall receive an honorable discharge," applicable to the first class, were not meant to embrace any other such discharge than one granted after the full period of enlistment had been served out.

This construction evidently renders it necessary to add to that part of the section these words: "at the expiration of his term of service." The terms actually used neither imply nor justify such an addition. They are, in themselves, perfectly clear. A non-commissioned officer, &c., enlisted in the regular army, or such a volunteer as is described mustering in a volunteer company, and serving *during the war, not during the period of enlistment*, and then honorably discharged, is to receive the bounty. The words necessary to be superadded by the construction in question manifestly changes the entire sense of the language used: nor is such an interpretation called for by the object of the provision. That evidently was to hold out an incentive to faithful and gallant service *during the war*. It did not look to service *during a state of peace*. The increased peril of a war service, and the increased occasion it furnished for skill and daring, gave rise to the bounty. This being so, it would seem strange that the soldier who so served during the very exigency, and that ceasing, was honorably discharged, should not be entitled to the very benefit designed to meet it. The express provision for the third class, upon which the other view rests, is susceptible, I think, of a meaning perfectly consistent with the one I give to the provision for the first class. It is this: That it includes those who are discharged *before the end of the war*, and the termination of the enlistment, in consequence of wounds or sickness happening during the war.

In my opinion, the words "in course of such service," applying to the second and third classes, are equivalent with the words applicable to the first class, "who has *served*, or may *serve*, during the *present war*." The service meant is not a service commensurate with the term of enlistment, but with the continuance of the war, wholly irrespective of the term of enlistment. The words relied upon by the Pension Office for its decision, in my opinion, therefore, mean this: A discharge during the war, prior to the expiration of enlistment, in consequence of wounds or sickness occurring during the war. So far from qualifying, by limiting, the antecedent provision for the first class, they embrace another which would not have been otherwise provided for. Under the first, an honorable discharge at the *end of the war* is required. Under this, a discharge during the war, and before its end, in consequence of wounds, &c., is sufficient.

But there is another ground in my judgment sufficient to sustain the claim. The objection is not that the claimant did not serve during the war, and was not afterwards honorably discharged, but that he did not serve out his term of enlistment. The enlistment being on the 29th of January, 1846, was, under the law as it then stood, for a term of five years. But the act of the 13th of May, 1846, (*Session acts*, p. 16,) authorized the President to increase the army by increasing each company to one hundred privates, and the enlistments

to be made for the purpose are to "be for the term of five years and no longer, *unless sooner disbanded by the President.*" The increase was to be made when the President thought "the exigencies of the public service" required it, and he was to reduce it when such exigencies ceased.

Under this power, when the war ended, the reduction was made; and in making it, as he clearly had the right to do, he caused to be discharged some of those who were enlisted before May, 1846, as well as some who were afterwards enlisted. The claimant was among the former. The power to reduce was thought to be (and I think properly) independent of the character of the enlistment. The effect clearly was, to place those enlisted prior to the act of 1846 and those enlisted under that act upon the same footing as those enlisted after, as far as a discharge before the expiration of the term of enlistment was concerned. The consequence of this clearly was, to make the enlistment of both classes to be for five years, "unless sooner disbanded by the President." The latter qualification was, by the act of 1846, made as much a part of the antecedent enlistments as of those it authorized. This being the case, it is, in my opinion, perfectly clear that the present claimant, having been discharged under the reduction provided for by that act, and such discharge having been an honorable one, is entitled to the benefit of the act of 1847, even conceding the view of the Pension Office to be right, that the terms "and who shall receive an honorable discharge," found in the first part of the 9th section of the act, mean only a discharge at the end of the enlisted term, if he was so discharged. His term of service after the act of 1846 was five years, unless sooner disbanded by the President. If so disbanded, that was the expiration of his term of enlistment. But, in addition to all this, unless the words of the law admitted of no other meaning, would it be just to Congress to give them that interpretation? The nation was then at war, and the purpose was, because of the war, to encourage enlistments and good conduct in the army. This is done by the incentive of the promised bounty. The soldier is told: enlist, serve during the war, and be honorably discharged, and the bounty is yours. The pledge of the public faith is apparently complete. Now, if the construction of the Pension Office is the sound one, is it not clear that this pledge is but a false and deceitful instead of a fair one? Service, says the office, during the entire term of enlistment, is necessary, unless a prior discharge is caused by wounds or sickness. Before the term expires, then, (which may well happen, and in the present instance did happen,) Congress may direct or authorize the disbanding the army. Is it possible, in that event, the soldier having fully complied up to his discharge with his part of the engagement, and been prevented against his will and by the act of the government from complying throughout, that he is not to be entitled to demand compliance on the part of the government? Every principle of justice and fair dealing is on the side of such a demand, and it cannot be that Congress designed to deny it. Upon the whole, then, I am of opinion that the claim of Hasson should be allowed.

[Opinion of Attorney-General, July 27, 1849.]

A soldier discharged in consequence of a disease he was laboring under when he enlisted, is not entitled to land bounty.

[Secretary of the Interior, June 2, 1849.]

A volunteer not mustered into service with his company, but regularly mustered out with it, is entitled.

[Secretary of the Interior, November 12, 1849.]

It appears that the act of March 16, 1802, gives a pension to the soldier "who shall be disabled by wounds, or otherwise, while in the line of his duty in public service." The act of February 11, 1847, giving bounty land to soldiers, does not follow the language of the above act. It gives the bounty land to soldiers who, having served to the end of the war, shall receive an honorable discharge, or who may be discharged in consequence of wounds received "in the course of such service, or to the heirs of such as shall have been killed, or died of wounds received, or sickness incurred *in the course of such service*," omitting the restrictive words "*in the line of his duty*."

This change of phraseology cannot be presumed to be accidental. It was doubtless intended to save all inquiry as to the manner in which wounds were received, diseases contracted, or death occasioned, provided it was in the course of the service — that is, while the soldier was in the service and subject to duty. This construction is the more reasonable as it is for the enlistment and service, and not for the wounds, disease, or death that the bounty is given. The soldier undertook on his part to serve to the end of the war, if he were able to do so, and the Government undertook to give him the bounty land if he so served, and if he became unable to serve by reason of wounds received, disease incurred, or if he shall be killed in the course of his service. This soldier had served through the war; he had earned his land, was waiting for his discharge when he was killed in an affray. His death rendered his discharge impossible, and it is a substitute for it. His heirs, on full proof, are entitled to the bounty land.

[Secretary of the Interior, February 28, 1850.]

The claimant was discharged at Monterey by General Taylor, but no cause for his being discharged is assigned in his certificate of discharge. The rolls show that he was "discharged by order of General Taylor."

He has made an affidavit in which he states that he was discharged in consequence of sickness incurred in the service. It appears to me that inasmuch as there is no record proof of the fact, he should prove it by other testimony than his own affidavit. He has been advised by the Pension Office, that if he would prove by a commissioned officer that he was discharged in consequence of disease contracted in the service, his claim would be allowed. He swears that he has made diligent search for his commissioned officers, and is unable to ascertain the residences of either of them.

I am therefore of the opinion that the evidence now on file should be held insufficient to establish the claim, but that he should be in-

formed that the facts necessary to make out the case may be proved by credible persons, though not commissioned officers.

[Secretary of the Interior, March 9, 1850.]

I have examined the papers in the case of Charles Krohne, who was a private in the 1st regiment U. S. dragoons.

It appears that said Krohne was enlisted on the 30th November, 1844, for five years, and was *honorably discharged* the 9th May, 1847, by reason of having received a commission as 2d lieutenant in Captain Korponay's company mounted volunteers, from the Governor of Mississippi.

The records of the Adjutant-General's office show that Krohne was mustered into service as 2d lieutenant, 21st May, 1847, and mustered out of service 13th October, 1848.

The 9th section of the act of February 11, 1847, says "that each non-commissioned officer, musician, or private enlisted, or to be enlisted in the regular army, or regularly mustered in any volunteer company for a period of not less than *twelve months*, who has served or may serve during the present war with Mexico, and who shall receive an honorable discharge, shall be entitled to receive a certificate or warrant from the War Department for the quantity of 160 acres." The applicant comes within the letter of the law. He enlisted for more than 12 months; he served to the end of the war, and was honorably discharged; and I do not think he is excluded by the spirit and meaning of the act. He rendered as effectual service to the last as if he had remained in the ranks; and that good conduct and efficiency which induced promotion ought not to deprive the enlisted soldier of his bounty. The papers are herewith returned.

[Secretary of the Interior, March 28, 1850.]

I herewith return the papers in the case of James Thompson, private in the company of Captain Gillespie, 1st regiment of Texas mounted volunteers, and I am of the opinion that his land bounty should be allowed, as sickness, and his being in the hospital in Camargo, was the reason why he was not mustered into the service with the other members of his company.

[Secretary of the Interior, July 1, 1850.]

Volunteers under the act of May 13, 1846, who were mustered into service and went wherever their services were required, whether to Mexico, Florida, or elsewhere, are entitled under the act of 1847.

[Secretary of War, December 22, 1847.]

A soldier furloughed to act as a wagoner, and continuing so to act until his discharge, is entitled.

[Secretary of War, June 29, 1847.]

A soldier who left Mexico with his company, but was discharged on reaching New Orleans a few days before the expiration of his time, is entitled.

[Secretary of War, April 24, 1848.]

A rejected recruit has no claim to bounty land.

[Secretary of War, January 6, 1849.]

A soldier discharged before his term expires, in order that he may re-enlist, is entitled. [Secretary of War, July 24, 1847.]

A company raised for twelve months, stationed in Iowa, but discharged before the expiration of the period for which it was enlisted, on the recommendation of a general officer, is entitled. [Secretary of War, February 7, 1849.]

A party discharged on account of syphilis, is entitled under the act of 1847, as explained by that of the 24th March, 1848. [Secretary of War, April 3, 1848.]

Volunteers mustered in for 12 months, but discharged before that period had elapsed, are entitled. [Secretary of War, May 13, 1847.]

A soldier served to the end of the Mexican war, and was then discharged at the request of his friends; though his term of enlistment had not expired, he received his bounty land. [Secretary of the Interior, case of S. Reese.]

It is not necessary for the heirs to show that the death occurred from wounds received or sickness incurred in the *line of duty*, to entitle them under this act. [Secretary of the Interior, case of J. F. Talbert.]

Clerks employed in the Quartermaster's Department in Mexico are not entitled, unless they were regularly mustered into service. [Secretary of the Interior, case of A. C. Wakeman.]

One enlisted after the 30th May, 1848, which was the close of the Mexican war, is not entitled. [Secretary of the Interior, case of R. E. Kelly.]

I have considered the question submitted by you to this office, as to what is the proper construction of the joint resolution of the 10th of August, 1848, (*Session acts*, p. 225,) making certain provision for the officers, &c., of the marine corps "who have served with the army in the war with Mexico."

Two battalions of the corps, under the separate commands of Lieutenant-Colonel Watson and Major Harris, were, as you inform me, "detached from the navy, and transferred *pro tempore* to the army," to serve with it, under Major-General Scott's command, in the war. That these are entitled to the benefit of the resolution, is considered by you, and properly, "as clear and indisputable;" but the doubt is, whether any other part of the corps is entitled? Upon this point, my opinion is decisive. With all proper deference to the judgment of my predecessor in the department, who, as I understand, gave the resolution that limited construction upon which as yet it has been executed, my opinion is that such construction is neither consistent with its spirit nor language. The interpretation I give to it is, that all the officers, non-commissioned officers, privates, and musicians of the corps who belonged to the vessels of the United States despatched to the Mexican coast, to aid in subduing the cities and

ports of the enemy, and conquering the country, and who were there for the purpose, are equally embraced by the resolution with the particular detachments under Lieutenant-Colonel Watson and Major Harris.

All that is necessary to bring any portion of the corps within the scope of the provision is, that they should have "served with the army in the war with Mexico." Whether such service was on the land, or on the water, if it was rendered in connexion or association with the army, and to effect a common end — victory over, and conquest of, the enemy — it was serving "with the army in the war." The resolution prescribes no particular theatre of service. It is couched in general terms. Neither land nor ocean is, in any way, in words referred to. It is service generally, anywhere, and in any mode, during the war, in union with the army, that is intended to be provided for.

[Opinion of Attorney-General, September 17, 1849.]

A soldier died entitled to bounty land, leaving a mother, who did not receive it during her life; her heirs are entitled.

[Secretary of War, March 24, 1848.]

The soldier who first enlisted, and not any substitute he may employ to serve out his term, is entitled.

[Secretary of War, November 3, 1848.]

No. 3.

Devise.

Right to bounty land is not devisable under this act.

[Opinion of Attorney-General, June 28, 1850.]

No. 4.

Fraud.

The person legally entitled is not to lose his warrant because another has fraudulently obtained one upon the same service.

[Secretary of the Interior, May 16, 1849, and March 16, 1850.]

No. 5.

Evidence of the term of enlistment.

The rolls show that a soldier enlisted for five years, he is discharged, on writ of *habeas corpus*, by a civil court, on the ground that he enlisted only for the war; the rolls must govern, and the soldier loses his land warrant.

[Secretary of War, November 13, 1848.]

Where the rolls show an enlistment for five years, but the soldier is discharged on *habeas corpus* on the ground that he enlisted only for the war, the judicial opinion is to govern, unless fraud be shown, and the party is entitled to his land.

[Secretary of the Interior, August 18, 1849.]

No. 6.

Reissue of an assigned land warrant.

In reply to the inquiry contained in your letter of the 21st instant, I have the honor to state that the instructions from this department, dated the 25th ultimo, "are intended to apply to cases where the certificates, after being assigned, have been lost in their transmission by mail from one place to another."

The duplicate certificate would, as a matter of course, issue to the party to whom the original was issued, and be delivered to the person claiming to be the assignee, after he had in the usual manner before court established the execution of the last assignment.

[Secretary of the Interior, March 23, 1850.]

I am of the opinion that if you are fully satisfied of the loss of the certificates in the mail, you may issue duplicates and deliver to the person entitled to the *possession* of the originals. As to the *assignments* transferring the *property*, you can take no notice of them, no matter what the proof may be. The transfer of the title where the assignment is lost is a matter to be settled in a court of justice, and a decree in chancery may be obtained either *before* or *after* the issuing of the duplicate certificates, which will settle the title between the parties.

[Secretary of the Interior.]

No. 7.

Commencement of the Mexican war.

The war with Mexico commenced on the 24th April, 1846.

[Secretary of the Interior, June 10, 1850.]

No. 8.

A warrant for each service.

If a soldier performed two or more tours of duty, during the Mexican war, he shall receive a warrant for each service.

[Secretary of War, July 21, 1847.]

FORM OF APPLICATION AND REGULATIONS.

State of }
County of } ss.

On this day of, in the year one thousand eight hundred and, personally appeared before me, the undersigned, a Justice of the Peace for the county and abovementioned,, who, being duly sworn according to law, declares that he is the identical who was a in the company commanded by Captain, in the regiment commanded by, that he enlisted on the day of, for the term of, and was discharged at, on the day of, by reason of

Sworn to and subscribed before me, the day and year above written.

.....

The discharge of the soldier, if he has one, must always accompany his declaration.

It is proper to state, for the information of claimants under the 9th section of the act of February 11, 1847, that, in every instance in which a volunteer soldier was discharged on a surgeon's certificate, that paper must be sent to the Pension Office with the claimant's affidavit, unless it has been otherwise disposed of. If lost, he should state the fact, under oath.

The official character and signature of the magistrate who may administer an oath must be certified by the proper officer, under his seal of office. The certificate must accompany every case, and be attached to the paper on which the affidavit is written. No affidavit taken before a notary public can be admitted as evidence, except in the States of New Hampshire, Connecticut, Virginia, South Carolina, Wisconsin, and Indiana, in which States laws have passed giving such officers power to administer oaths for general purposes.

The relinquishment of the right to bounty land must be signed by the claimant, if he wishes to receive scrip in lieu of land, and the relinquishment must be witnessed by some one who writes a legible hand.

Volunteers in some cases have been discharged from the service without ever having received a certificate to that effect from the officer who discharged them. Such cases have occurred where an entire regiment has been mustered out of the service. In such a case the claimant must make the oath of identity required by the regulations, and add to the statement as to his service the following words: "I never received any discharge. The regiment to which I belonged was mustered out of the service."

No assignment of land or scrip can be made until after a land warrant has been issued from the Pension Office, or a certificate of scrip, as the case may be.

As there were some six months' volunteers, who did not march to the seat of war, it is indispensably necessary that every soldier who was so engaged, should produce the certificate of the commanding officer of the regiment, or company, to which he belonged, showing that he was at the seat of war. The post to which the soldier marched should be mentioned.

For the purpose of preventing the numerous frauds that are daily attempted upon this office, the following rules, having been approved by the Secretary of the Interior, will be strictly enforced :

In all applications for pensions, renewals of pensions, and for bounty land, the signature of the applicant must be attested, and his or her personal identity established by the affidavits of two witnesses, whose residences must be given, and whose credibility must be sustained by the certificate of the court or magistrate before whom the application is verified.

No certificate of facts found by any court will be deemed sufficient in any case, unless the facts are certified to be within the personal knowledge of the Judge who shall sign the certificate ; or the names

and places of residence of the witnesses by whom the facts are established be given; or their affidavits, properly authenticated, be appended to the certificate.

INSTRUCTIONS AND FORMS

To be observed by persons applying to the Pension Office for Bounty Land, under the acts of February 11, 1847, and May 27, 1848, or for money in lieu of land under the act of March 3, 1849.

Every person applying for bounty land, or money in lieu thereof, must send his discharge to the Pension Office, if he ever received one, and has it in his power to send it. If his discharge has been lost or destroyed, he must swear to the fact of its loss or destruction. If discharged on surgeon's certificate of disability, that certificate must be sent with the discharge, unless it has been otherwise disposed of; in which case it must be shown how it has been disposed of.

Volunteers in some cases have been discharged from the service without ever having received a certificate to that effect from the officer who discharged them. Such cases have occurred where an entire regiment has been mustered out of the service. In such a case the claimant must make the oath of identity required by the regulations, and add to the statement as to his service the following words: "I never received any discharge. The regiment to which I belonged was mustered out of the service."

In case the claimant should desire money instead of land, he must make his request in writing, according to the following form, and he must sign it, and the same must be witnessed by some one who writes a legible hand:

SIR: I request that my claim to bounty land, under the 9th section of the act of the 11th of February, 1847, entitled "An act to raise for a limited time an additional military force, and for other purposes," may be examined; and if I am entitled to land, I wish to relinquish, and do hereby relinquish, my right thereto, and in lieu thereof to receive one hundred dollars, [or twenty-five dollars, as the case may be.]

I am, respectfully, your obedient servant,

TO THE COMMISSIONER OF PENSIONS,
Washington City.

No copy of a discharge, or any other paper, can be admitted as evidence, unless the original be on file in some public office; in which case a duly certified copy from the office where the original is on file must be produced.

Every applicant for bounty land or scrip must swear to a declaration, before an officer duly authorized to administer oaths for general purposes, according to the following form:

State of }
 County of } ss.

On this day of, in the year one thousand eight hundred and, personally appeared before me, the undersigned, a Justice of the Peace for the county and abovementioned, who being duly sworn according to law, declares that he is the identical, who was a in the company commanded by Captain, in the regiment commanded by; that he enlisted on the day of, for the term of, and was discharged at, on the day of, by reason of

Sworn to and subscribed before me, the day and year above written.

The following description of persons are not entitled to land or money in lieu thereof: 1. Those who are discharged on account of disability not incurred while in the service. 2. Those who deserted. 3. Those who were not honorably discharged. 4. Those who were discharged at their own request. 5. Rejected recruits, or persons who were not fit for service when they enlisted.

No. 5.

BOUNTY LANDS

FOR ALL OFFICERS AND SOLDIERS NOT INCLUDED IN THE PRECEDING LAWS, WHO SERVED IN ANY WAR SINCE 1790, AND THE WIDOWS AND MINOR CHILDREN OF THE DECEASED.

An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned officers, musicians, or privates, whether of regulars, volunteers, rangers, or militia, who performed military service in any regiment, company, or detachment, in the service of the United States, in the war with Great Britain, declared by the United States on the eighteenth day of June, eighteen hundred and twelve, or in any of the Indian wars since seventeen hundred and ninety, and each of the commissioned officers who were engaged in the military service of the United States in the late war with Mexico, shall be entitled to lands, as follows: Those who engaged to serve twelve months or during the war, and actually served nine months, shall receive one hundred and sixty acres, and those who engaged to serve six months, and actually served four months, shall receive eighty acres, and those who engaged to serve for any or an indefinite period, and actually served one month, shall receive forty acres: *Provided,* That wherever any officer or soldier was honorably discharged in consequence of disability in the service, before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which

he had engaged to serve: *Provided*, The person so having been in service shall not receive said land, or any part thereof, if it shall appear, by the muster rolls of his regiment or corps, that he deserted, or was dishonorably discharged from service, or if he has received, or is entitled to, any military land bounty under any act of Congress heretofore passed.

SEC. 2. *And be it further enacted*, That the period during which any officer or soldier may have remained in captivity with the enemy shall be estimated and added to the period of his actual service, and the person so detained in captivity shall receive land under the provisions of this act in the same manner that he would be entitled in case he had entered the service for the whole term made up by the addition of the time of his captivity, and had served during such time.

SEC. 3. *And be it further enacted*, That each commissioned and non-commissioned officer, musician, or private, for whom provision is made by the first section hereof, shall receive a certificate or warrant from the Department of the Interior for the quantity of land to which he may be entitled, and which may be located by the warrantee or his heirs-at-law, at any land-office of the United States, in one body and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made to the General Land Office, a patent shall be issued therefor. In the event of the death of any commissioned or non-commissioned officer, musician, or private, prior or subsequent to the passage of this act, who shall have served as aforesaid, and who shall not have received bounty land for said services, a like certificate or warrant shall be issued in favor, and enure to the benefit of his widow, who shall receive one hundred and sixty acres of land in case her husband was killed in battle, but not to her heirs: *Provided*, She is unmarried at the date of her application: *Provided further*, That no land warrant issued under the provisions of this act shall be laid upon any land of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation, except with the consent of such settler, to be satisfactorily proven to the proper land officer.

SEC. 4. *And be it further enacted*, That all sales, mortgages, letters of attorney, or other instruments of writing, going to affect the title or claim to any warrant or certificate issued, or to be issued, or any land granted, or to be granted, under the provisions of this act, made or executed prior to the issue, shall be null and void to all intents and purposes whatsoever; nor shall such certificate or warrant, or the land obtained thereby, be in any wise affected by, or charged with, or subject to, the payment of any debt or claim incurred by such officer or soldier, prior to the issuing of the patent: *Provided*, That the benefits of this act shall not accrue to any person who is a member of the present Congress: *Provided further*, That it shall be the duty of the Commissioner of the General Land Office, under such regulations as may be prescribed by the Secretary of the Interior, to

cause to be located, free of expense, any warrant which the holder may transmit to the General Land Office for that purpose, in such State and land district as the said holder or warrantee may designate, and upon good farming land, so far as the same can be ascertained from the maps, plats, and field-notes of the surveyor, or from any other information in the possession of the local office, and, upon the location being made as aforesaid, the Secretary shall cause a patent to be transmitted to such warrantee: *And provided further*, That no patent issued under this act shall be delivered upon any power of attorney or agreement dated before the passage of this act, and that all such powers of attorney or agreements be considered and treated as null and void.

[Approved, September 28, 1850.]

An act making land warrants assignable, and for other purposes

Sec. 5. *And be it further enacted*, That where any company, battalion, or regiment, in an organized form, marched more than twenty miles to the place where they were mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion, or regiment was organized; in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion, or regiment, with a view to determine the quantity of land any officer or soldier is entitled to under said act, approved 28th of September, 1850, there shall be allowed one day for every twenty miles from the place where the company, battalion, or regiment was organized, to the place where the same was mustered into the service of the United States; and also one day for every twenty miles from the place where such company, battalion, or regiment was discharged, to the place where it was organized, and from whence it marched, to enter the service.

[Approved, March 22, 1852.]

DECISIONS UNDER THE ACT OF SEPTEMBER 28, 1850.

No. 1.

Marines entitled.

I have to inform you that where any portion of the marine corps in the several wars referred to in the act of the 28th September, 1850, were embodied with the army in the field, and performed service as a portion of the line of the army, they are entitled to the benefit of the aforesaid act.

[Secretary of the Interior, October 12, 1850.]

No. 2.

One person can receive only one warrant.

It has also been decided, that although not expressly provided by the terms of the law, yet its tenor throughout contemplates that the same person shall not receive more than one warrant, although he may have performed service which, if rendered by several individuals, would entitle each to a warrant.

[Secretary of the Interior, October 12, 1850.]

If a soldier served longer than is sufficient to entitle him to forty acres, he may agglomerate all the time of his several services, and receive a land warrant for the aggregate.

No. 3.

What widows entitled.

The second marriage of the widow deprives her of the benefit of the act, unless she was a widow at the time of the passage of the law, and of her application for the land bounty.

[Secretary of the Interior, October 26, 1850.]

The present Secretary of the Interior has decided that if the widow of the soldier remarried after his death, she can claim nothing for his services, though a widow when applying.

No. 4.

Who not entitled.

Troops called out by a proclamation of the President of the United States, but not mustered into service, are not entitled.

[Secretary of the Interior, February 3, 1851.]

The Winnebago disturbances in 1827, did not amount to such a state of war as to authorize bounty land to the soldiers engaged in their suppression.

[Secretary of the Interior, May 23, 1853.]

Widows of soldiers who themselves received bounty land for services in the war of 1812 are not entitled.

[Case of Mary Ballard, decided November 10, 1853.]

No. 5.

Warrant issued after the soldier's death.

A warrant which issues after the death of the soldier in whose name it is granted, should be cancelled. If he left a widow, a new one will issue to her; if no widow, then to his minor children; if neither widow nor minor child, the warrant lapses to the government.

[Secretary of the Interior, December 27, 1851.]

No. 6.

Evidence of Desertion.

If a soldier be returned on the rolls as a deserter, this charge cannot be obviated by parole proof.

[Secretary of the Interior, case of Adam Carver, June 23, 1853.]

If the charge be unfounded, the party should satisfy the War Department of that fact, and the rolls being corrected there, the Pension Office will grant the bounty land.

No. 7.

Captivity.

The time a soldier was in captivity will be computed as part of his service, but not that while he was on parole.

[Secretary of the Interior, case of R. E. Kelly, March 16, 1852.]

No. 8.

Minors.

No child can claim as a minor under this act unless such as continues to be a minor at the date of the warrant.

[Secretary of the Interior, May 30, 1853.]

No. 9.

Substitutes.

The substitute, and not the employer, is entitled.

[Secretary of the Interior.]

FORM OF DECLARATION AND REGULATIONS.

In every application for the benefit of this act, whether made by the surviving officer or soldier himself, or by his widow or minor child or children, a declaration, under oath, must be made as nearly according to the following forms as the nature of the case will admit.

In such declaration the signature of the applicant must be attested, and his or her personal identity established by the affidavits of two witnesses, whose residences must be given, and whose credibility must be sustained by the certificate of the magistrate before whom the application is verified.

No certificate of facts will be deemed sufficient in any case, unless the facts are certified to be within the personal knowledge of the magistrate or other officer who shall sign the certificate; or the names and places of residence of the witnesses by whom the facts are established be given, and their affidavits, properly authenticated, be appended to the certificate.

The official character and signature of the magistrate who may administer the oath must be certified by the clerk of the proper court of record of his county, under the seal of the court, and a certificate to that effect must accompany every case.

In every instance where the certificate of the certifying officer who authenticates the paper is not written on the same sheet of paper which contains the affidavit or other papers authenticated, the certificate must be attached thereto by a piece of tape or narrow ribbon, the ends of which must pass under the official seal, so as to prevent any paper from being improperly attached to the certificate.

As the act of 1850 grants bounty land to "each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned *officers, musicians, and privates*," those applying for this bounty upon services rendered in any other capacity must furnish satisfactory proof that they were regularly detailed from the line for that particular purpose; and members of the marine corps must have *served with the army in the field*, in the several wars referred to in the act of 1850, as a portion of the army, in order to give them the benefits of the act.

When the name of a person on whose service a claim is asserted is not found on the rolls of the company designated, or of some other company of the same regiment or corps, the testimony of persons who were in a situation to know the facts about which they testify will be received to prove the service; but in no case will any testimony be allowed to vary or discredit the length of service shown by the rolls.

When no rolls of a company in which service is alleged to have been rendered are found in the files of the proper department, satisfactory proof of payment for such service by the United States will be required; and in that case the positive testimony of at least two witnesses who have received bounty land for the same service, or who were in a position to know the facts about which they testify, will be required to establish the service of the claimant.

Where a party dies *before* the issue of his land warrant under the act of 28th September, 1850, the right to it dies with him, unless there be a widow, or children who are minors at the time of the issue of the land warrant. If he left a widow, the application may be renewed in her name; or if none, then in the names of such minor children. If there be neither widow nor *minor* children, no right vests in any one.

If the claimant die *after* the issue of the warrant, the title thereto vests in the heirs in the same manner as real estate, and can be assigned only by those who could convey a tract of land descended from the ancestor.

Where the service has been rendered by a substitute, he is the person entitled to the benefit of the law, and not his employer; and where his name does not appear on the rolls as such, an affidavit to that effect of the person who employed him should be furnished.

FORM OF A DECLARATION TO BE MADE BY THE SURVIVING OFFICER OR SOLDIER.

STATE OF, }
County of, } ss.

On this day of, A. D. one thousand eight hundred and, personally appeared before me, a Justice of the Peace, (*or other officer authorized to administer oaths for general purposes,*) within and for the county and State aforesaid,, aged years, a resident of, in the State of, who, being duly sworn according to law, declares that he is the identical who was a in the company (a) commanded by Captain, in the regiment of, commanded by, in the war with Great Britain, declared by the United States on the 18th day of June, 1812, (*or other war embraced in said act, describing what war;*) that he enlisted (*or volunteered, or was drafted*) at, on or about the day of A. D., for the term of, and continued in actual service in said war for the term of, and was honorably discharged at on the day of, A. D. (b)

(a) If the claimant was a regimental or staff officer, the declaration must be varied according to the facts of the case.

(b) If the claimant was discharged in consequence of disability incurred by the service, or if he was in captivity with the enemy, he must vary his declaration so as to set forth the facts of the case.

In addition to the service above described, he claims for miles, from at which he was enrolled, to, where he was mustered into service, and for miles, from, at which he was discharged, to the said place of his enrolment.

He makes this declaration for the purpose of obtaining the bounty land to which he may be entitled under the "act granting bounty land to certain officers and soldiers who were engaged in the military service of the United States," passed September 28th, 1850. He also declares that he has not received a warrant for bounty land under this or any other act of Congress, nor made any other application therefor,

(Signature of the claimant.)

STATE of
City (or town) of
County of } ss.

Personally came and, residents of the (county, city, or town,) persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say, that they were present and saw make his mark (or sign his name) to the foregoing declaration; and they further swear that they have every reason to believe, from the appearance of the applicant, that he is the identical person he represents himself to be; and that they, deponents, do reside in the (county, city or town) aforesaid.

(Signature of witnesses.)

Sworn to and subscribed before me this day of

(Signature of Justice, or other officer.)

FORM OF A DECLARATION TO BE MADE BY THE WIDOW OF A DECEASED OFFICER OR SOLDIER.

STATE OF, }
County of, } ss.

On this day of, A. D. one thousand eight hundred and, personally appeared before me, a Justice of the Peace, (or other officer authorized to administer oaths for general purposes,) within and for the county and State aforesaid,, aged years, a resident of, in the State of, who, being duly sworn according to law, declares that she is the widow of, deceased, who was a, in the company commanded by Captain, in the regiment of, commanded by, in the war with Great Britain, declared by the United States on the 18th day of June, 1812, (or other war, as the case may be;) that her said husband enlisted (or volunteered or was drafted) at, on or about the day of, A. D., for the term of, and continued in actual service in said war for the term of, and was honorably discharged at, on the day of, A. D. (a)

(a) The notes to the preceding declaration are also applicable to this. In some cases it will, perhaps, be impossible for the widow to state the facts in relation to her husband's services with the particularity as to dates, &c., indicated by the above form. In such case she must set forth the facts with as much accuracy as possible. It will be indispensable for her to state the company and regiment in which he served. If her husband was killed in battle, that fact must be set forth in the declaration.

This declaration must be accompanied by satisfactory proof of the marriage, and of the husband's death. If there be a public record of the marriage, a duly certified copy of it should be forwarded, if possible. If there be none but a private or family record, such family record, or a certified copy of the same, should be forwarded, with the affidavit of some disinterested persons proving the genuineness of the original and the correctness of the copy. If no public or private record of the marriage exist, or can be procured, that fact should be set forth in the declaration; and in such case, other evidence—such as the testimony of persons who knew the parties in the lifetime of the

She makes this declaration for the purpose of obtaining the bounty land to which she may be entitled under the "act passed September 28, 1850."

(Claimant's signature.)

Sworn to and subscribed before me the day and year above written.

(Officer's signature.)

APPLICATION BY MINOR CHILDREN.

If any officer or soldier who would have been entitled to bounty land under this act be dead, leaving no widow who still survives him, but a child or children under the age of majority, at the time of the issuing of the warrant, such minor child or children are entitled to the same quantity of land that the father would have been entitled to.

In such case, the *guardian*, or next friend of such minor child or children, must make a declaration as nearly corresponding with the foregoing forms as the nature of the case will admit. He must state the time of the father's death, the fact that no widow survives him, and the *name* or *names*, and *exact age* or *ages*, of his surviving minor child or children.

This declaration must be accompanied by *satisfactory proof* of the father's death, that no widow survives him, and of the ages of the minor children. If there be any *family record* showing the ages of the children, that or a certified copy of it should be forwarded, with the affidavit of some disinterested person, proving the genuineness of the original, and that the copy certified is a true and correct one.

husband, and knew them to live together as husband and wife, and to be so reputed—will be admissible.

¶ In no case, however, will the mere statement of witnesses that the claimant is *the widow* of the deceased, be taken as evidence of the marriage; but the witnesses must state the *facts* and *circumstances* from which they derive their knowledge or opinion that she is the widow of the deceased.

A certificate from the clergyman or magistrate who solemnized the marriage is not competent evidence, unless the genuineness of the certificate be proved, and the person who gave it be shown to have been authorized to solemnize marriages.

She further states that she was married to the said in, on the day of, A. D., by one, a, and that her name before her said marriage was; that her said husband died at, on the day of, A. D., and that she is still his widow. (a)

(a) A widow forfeits her title by a subsequent marriage (except those widows whose husbands were killed in battle;) and in such case it descends to the minor child or children, if any.

No. 6.

BOUNTY LANDS

FOR ALL MILITIA OR VOLUNTEER OFFICERS AND SOLDIERS WHO HAVE BEEN PAID FOR MILITARY SERVICES SINCE THE 18TH JUNE, 1812.

An act making land warrants assignable, and for other purposes.

SEC. 4. *And be it further enacted*, That in all cases where the militia or volunteers or State troops of any State or Territory were called into military service, and whose services have been paid by the United States subsequent to the eighteenth of June, eighteen hundred and twelve, the officers and soldiers of such militia, volunteers, or troops, shall be entitled to all the benefits of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved September twenty-eighth, eighteen hundred and fifty, and shall receive lands for their services according to the provisions of said act, upon proof of length of service as therein required; and that the last proviso of the ninth section of the act of eleventh of February, eighteen hundred and forty-seven, be and the same is hereby repealed: *Provided*, That nothing herein contained shall authorize bounty land to those who have heretofore received or become entitled to the same.

[Approved, March 22, 1852.]

The benefits of the act of September 28, 1850, were confined to those who had served in the field during some war declared or recognised by Congress. This act, it will be perceived, extends to all militia, volunteers, and State troops who, since the declaration of the last war with Great Britain, had been paid by the United States for military services, whether at the seat of hostilities or not, and whether during a time of acknowledged war or not. With this exception, all the remarks relative to the act of 1850 apply to this.

The form of declaration is the same with that under the act of 1850, except in the recitation of the act, which of course is named as that of March 22, 1852.

GENERAL RULES RELATING TO ALL LAND WARRANTS.

A warrant obtained by fraud will always be cancelled by the Department, unless in the hands of an innocent purchaser. In the latter event, the Secretary of the Interior, on the 10th November, 1851, decided that the government was responsible.

The fact that a party has fraudulently obtained a land warrant for a particular service, does not preclude the party really entitled.

Land warrants, at first expressly made incapable of transfer, were all made assignable by the following act:—

An act making land warrants assignable, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all warrants for military bounty land, which have been or may hereafter be issued under any law of the United States, and all valid locations of the same, which have been or may hereafter be made, are hereby declared to be assignable, by deed or instrument of writing, made and executed after the taking effect of this act according to such form, and pursuant to such regulations as may be prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owners of the warrant or location: *Provided,* That any person entitled to pre-emption right to any land, shall be entitled to use any such land warrant, in payment of the same, at the rate of \$1.25 per acre, for the quantity of land therein specified: *Provided,* That the warrants which have been or may hereafter be issued in pursuance of said laws, or of this act, may be located, according to the legal subdivisions of the public lands, in one body, upon any lands of the United States, subject to private entry at the time of such location, at the minimum price: *Provided further,* That when said warrants shall be located on lands which are subject to entry at a greater minimum than \$1.25 per acre, the locator of said warrants shall pay to the United States in cash the difference between the value of such warrants at \$1.25 per acre, and the tract of land located on.

[Approved, March 22, 1852.]

PART VII.

PAY TABLES, MISCELLANEOUS RULES, &c.

ARMY PAY.

PAY OF THE ARMY, ACCORDING TO THE PAY TABLE OF 1852.

Rank or Grade.	Pay per month.	Rank or Grade.	Pay per month.
Major general	\$200	Assistant surgeon of ten years' service.....	\$ 50
Aid-de-camp, in addition to pay, &c., of lieutenant.....	24	Assistant surgeon of five years' service.....	50
Brigadier general.....	104	Assistant surgeon, less than five years' service.....	33½
Aid-de-camp to brigadier general, in addition to pay, &c., of lieutenant.....	20	Prof. of natural and experimental philosophy.....	75
Adjutant general.....	90	Assistant prof. of natural and experimental philosophy.....	50
Assistant adjutant general, with rank of lt. colonel.....	75	Professor of mathematics and commander of corps of cadets, each	60
Assistant adjutant general, with rank of major.....	60	Assistant professor of mathematics	50
Assistant adjutant general, with rank of captain.....	50	Professor of engineering.....	60
Quartermaster general.....	104	Assistant professor of engineering and instructor of practical engineering, each.....	50
Inspector general.....	90	Professor of chemistry, mineralogy, and geology.....	60
Assistant quartermaster general.....	90	Assistant professor of chemistry, mineralogy, and geology, and assistant professor of ethics, each	50
Deputy quartermaster general.....	75	Chaplain and professor of ethics...	60
Quartermaster.....	60	Teacher of French language.....	50
Assistant quartermaster.....	50	Teacher of drawing.....	50
Paymaster general, \$2,500 per ann.		Master of the sword.....	46½
Deputy paymaster general.....	75	Military storekeeper, clothing department, \$1,250 per annum...	
Paymaster.....	60	Storekeeper of ordnance at arsenals of construction, \$1,250 per ann.	
Commissary general of subsistence	90	Storekeeper of ordnance, \$800 per annum.	
Assistant commissary general of subsistence.....	75	Chaplain not to exceed.....	40
Commissary of subsistence, with rank of major.....	60	Colonel of engineers, topographical engineers, ordnance, dragoons, or mounted riflemen.....	90
Commissary of subsistence, with rank of captain.....	50	Lt. col. of do. do. do. do. do.	75
Assistant commissary of subsistence, in addition to pay, &c., of lieutenant.....	20	Major of do. do. do. do. do.	60
Surgeon general, \$2,500 per ann.			
Surgeon of ten years' service in that grade.....	60		
Surgeon, less than ten years' service.....	60		

Rank or Grade.	Pay per month.	ARTILLERY AND INFANTRY.	
Captain of engineers, topographical engineers, ordnance, dragoons, or mounted riflemen	\$ 50	Rank or Grade.	Pay per month.
Lt. 1st & 2d do. do. do. do.	33 $\frac{1}{2}$	Colonel	75
Adjutant of dragoons, in addition to pay, &c., of lieutenant	10	Lieutenant-colonel	60
Regimental quartermaster of dragoon, in addition to pay, &c., of lieutenant	10	Major	50
Serg. maj. of drag. or m't'd riflemen	17	Adjutant, in addition to pay, &c. of lieutenant	10
Q'rmaster serg. of drag. do.	17	Regimental quartermaster, in addition to pay, &c., of lieutenant ...	10
Chief bugler of do. do.	17	Captain	40
First sergeant of do. do.	16	First lieutenant	30
Sergeant of do. do.	13	Second lieutenant	25
Corporal of do. do.	10	Cadet	24
Bugler of do. do.	9	Sergeant-major	17
Far. & blacksm'h of do. do.	11	Quartermaster-sergeant	17
Private of do. do.	8	Principal musician of infantry	17
Master armorer, master carriage maker, master blacksmith, of ordnance	30	First sergeant	16
Armorer of ordnance	16	Ord. serg., in addition to pay, of sergeant	5
Blacksmith of do.	16	Sergeant	12
Carriage maker of do.	16	Corporal	9
Artificer of do.	13	Artificer of artillery	11
Lahorer of do.	9	Musician	8
Hospital steward, at a post of more than four companies, pay of ordnance sergeant	18	Private	7
Hospital steward, pay of 1st serg't.	16	SAPPERS, MINERS AND PONTONIERES.	
Matron	6	Sergeant	30
		Corporal	16
		Musician	8
		Private, of the 1st class	13
		Private, of the 2d class	9

NAVY PAY,

AS IT EXISTED ON THE 1ST JANUARY, 1835.

Rank or Grade.	Pay per month.	Rank or Grade.	Pay per month.
Captains	\$ 100	Assistant surgeons at sea	45
Do. of vessels above 20 and under 32 guns	75	Pursers	40
Masters Commandant	60	Chaplains	40
Lieutenants Commanding	60	Passed Midshipmen	25
Lieutenants	50	Midshipmen	19
Surgeons	—	Sailing Masters	40
Under 5 years—on shore	50	Boatswains	20
..... at sea	60	Gunners	20
Over 5 years—on shore	55	Carpenters	20
..... at sea	65	Sail-makers	20
Over 10 years—on shore	60	School-masters	25
..... at sea	70	Captains' Clerks	25
Over 20 years—on shore	70	Masters' Mates	20
..... at sea	80	Boatswains' Mates	19
Surgeons of the Fleet	—	Carpenters' Mates	19
..... Under 5 years	60	Coxswains	18
..... Over 5 years	65	Quarter-Gunners	18
..... 10 years	70	Master-at-Arms	18
..... 20 years	80	Armorsers	18
Assistant Surgeons	—	Stewards	18
Under 5 years—on shore	30	Coopers	18
Over 2 years—at sea	35	Cooks	18
..... 5 years—on shore	35	Seaman	12
..... at sea	40	Ordinary Seaman	10
Ten years—on shore	40	Landsman	9
		Boys	6 to 8

The rate of pension of Engineers, Firemen, &c., is fixed by the act of August 11, 1848.

MARINE PAY.

Rank or Grade.	Pay per month.	Rank or Grade.	Pay per month.
Colonel-Commandant	\$ 75	ship or squadron—of 20 years' service	40
Lieutenant-Colonel	—	First Lieutenants	—
At sea or on leave	60	At sea or on leave—of 20 years' service	30
Commanding	60	At sea or on leave—of 15 years' service	30
Majors	—	At sea or on leave—of 10 years' service	30
At sea or on leave	50	On shore duty—of 20 years' service	30
Commanding	50	On shore duty—of 15 ys. service	30
Staff Captains	—	On shore duty—of 10 ys. service	30
Adjutant and inspector	60	Commanding guard in receiving ship or squadron—of 20 years' service	30
Pay and quartermasters, each ...	60	Commanding guard in receiving ship or squadron—of 15 years' service	30
Staff Lieutenants	—	Commanding guard in receiving ship or squadron—of 10 years' service	30
Assistant quartermaster	50	Second Lieutenants	—
Captains	—	At sea or on leave—of 10 years' service	25
At sea or on leave—of 30 years' service	40	At sea or on leave—of 5 years' service	25
At sea or on leave—of 25 years' service	40	Orderly Sergeant	16
At sea or on leave—of 20 years' service	40	Sergeant	13
On shore duty—of 30 years' service	40	Corporal	9
On shore duty—of 25 years' service	40	Musician	8
On shore duty—of 20 years' service	40	Private	7
Commanding a guard in receiving ship or squadron—of 30 years' service	40		
Commanding a guard in receiving ship or squadron—of 25 years' service	40		
Commanding a guard in receiving			

APPLICATION WHERE A PENSION CERTIFICATE IS ILLEGALLY WITHHELD.

The pensioner must state, in its place in the affidavit here appended, the amount of pension to which he is now entitled, which, in some cases, varies from that in the original certificate; and he must sign and make oath to the affidavit.

The oath may be administered by any officer properly qualified to take an affidavit.

Such officer will state, in the place indicated in his certificate here appended, the evidence of identity of the affiant or pensioner; whether personal knowledge, or the affidavits of respectable persons—giving their names.

AFFIDAVIT OF THE PENSIONER.

STATE OF, }
 County of, } ss.

Be it known, that before me,, a Justice of the Peace in and for the county aforesaid, personally appeared, and made oath, in due form of law, that he is the identical named in an original pension certificate now illegally withheld by, [*Here state the facts respecting the detention of the pension certificate.*] that he is entitled to a pension of dollars per month on account of the wounds and disabilities received, or of services rendered to the United States during the war; that he served in Captain 's company of, in the regiment; that he now resides in, and has resided there for the space of years past; and that, previous thereto, he resided in

[Signed]

A..... B.....

Sworn and subscribed this day of, 18....

[*Certificate of the officer who administers the oath.*]

STATE OF, }
 County of, } ss.

Conformably to the regulations of the War Department of the 27th of October, 1832, I,, a magistrate in the county above named, do hereby certify that I have the most satisfactory evidence, viz.:, [*Here state the evidence of identity, whether personal knowledge, or the affidavit of respectable persons,*] that, who this day appeared before me to take the oath of identity, is the identical pensioner he declares himself to be in the annexed affidavit; and I am also satisfied that the statement made by him in relation to the pension certificate is true.

Given under my hand at, the day and year above written.

C..... D....., J. P.

[*Certificate and seal of the Clerk of the Court.*]

I,, clerk of the court of county, certify that is a magistrate as above, and that the foregoing certificate, purporting to be his, is genuine.

In testimony whereof, I have hereunto affixed my seal of office, and subscribed my name, this day of, in the year

[L. S.]

C..... C.....,

Clerk of the Court of county.

APPLICATION WHERE A PENSION CERTIFICATE IS LOST.

The oath of the pensioner must be taken before a duly qualified magistrate, whose official character and signature must be properly authenticated.

The pensioner's oath must be supported by another person as to identity, who must swear that he well knows him to be the same person described in the affidavit.

The magistrate must certify that the deponent is a person of veracity. And his official character must be authenticated by the certificate of the proper officer, under his seal of office, setting forth that the officer before whom the affidavit may be made is a justice of the peace, judge, or notary public, (as the case may be.)

In every case where the clerk of the court or other certifying officer has no public seal of office, the certificate of a member of Congress, proving the official character and signature of the certifying officer, should be sent with the papers.

When a person acting as an agent or attorney for a pensioner loses the certificate, the affidavit of that person is also required, which must be authenticated as above.

No attention will be given to applications from persons who act as agents, unless they are known at the War Department, or are vouched for as respectable persons by some one who is known to the Department.

FORM OF APPLICATION FOR A NEW CERTIFICATE OF PENSION.

County of, ss.

On this day of, 18..., before me, the subscriber, a Justice of the Peace for the said county of, personally appeared, who, on his oath, declares that he is the same person who formerly belonged to the company commanded by Captain, in the regiment commanded by Colonel in the service of the United States; that his name was placed on the pension roll of the State of; that he received a certificate of that fact under the signature and seal of the Secretary of War, which certificate, on or about the day of, 18..., at or near he

[Signed]

A..... B.....

Sworn and subscribed to before me, the day and year aforesaid.

C..... D....., J. P.

[Here should be annexed the testimony of some respectable person to identify the pensioner.]

[Here the magistrate must certify that the deponent is a person of veracity.]

[And here the Clerk of Court, Secretary of State, or other officer, must certify, under his seal of office, the official character of him who administered the oaths.]

APPLICATION FOR INCREASE OF AN INVALID PENSION.

No application for an increase of an invalid pension will be examined, unless the proof be first presented to the pension agent where the payment is made. He will forward the "surgeons' affidavit," the "pension certificate," &c., to the War Department. [Now to the Department of the Interior.]

If the applicant was pensioned on account of a wound received previous to the late war, he should be examined by two surgeons, under a commission issued by a judge of one of the United States courts, in order to obtain an increase of his pension.

The magistrate who may administer the oath to the surgeons must certify that they are respectable in their profession, or believes, on the information of others, that they are so.

And the official character and signature of the magistrate must be certified by a proper officer under his seal of office.

If the claimant be within *thirty miles* of an army surgeon, he must obtain his testimony.

The oath may be made before any officer duly authorized to administer oaths.

SURGEONS' AFFIDAVIT FOR AN INCREASE OF INVALID PENSION.

It is hereby certified that formerly a of Captain company, in the regiment of; who it appears by the accompanying, was placed on the pension roll at the rate of dollars per month, on account, as he states, of having received a while in the line of his duty, and in the said service, on or about the day of, in the year, at

a place called, in the State [or Territory] of, is not only still disabled in consequence of the said injury, but, in my opinion, is entitled to more than he already receives as a pensioner, being disabled to a degree amounting to of a total disability

E..... F....., } Surgeons.
G..... H.....,

Sworn to and subscribed before me,

C..... D, J. P.

[Here should follow the certificate of the magistrate, that the surgeons are respectable in their profession.]

[And here the Clerk of Court, Secretary of State, or other officer, should certify, under his seal of office, the official character of the magistrate who administered the oath.]

APPLICATION FOR TRANSFER OF PAYMENT OF PENSION.

The oath of the applicant must be taken before a duly qualified magistrate, whose official character and signature must be certified by the proper officer, under his seal of office. The county clerk, Secretary of State, or some other officer, will certify under his seal of office, that the officer who administered the oath is a justice of the peace, judge, mayor, alderman, or notary public, (as the case may be,) and that the signature purporting to be his is genuine.

The oath must be supported by the testimony of some respectable person, as to the pensioner's identity. He must swear that the person who has taken the oath is the person described in the affidavit. The magistrate must certify that the witness is a person of veracity, and the affidavit must also be authenticated in the manner above directed.

In every case where the clerk of the court, or other certifying officer, has no public seal of office, the certificate of a member of Congress, proving the official character and signature of the certifying officer, should be sent with the papers.

FORM OF APPLICATION FOR A TRANSFER OF PENSION.

County of, ss.

On this day of, 18..., before me, the subscriber, a Justice of the Peace for the said county of, personally appeared, who, on his oath, declares that he is the same person who formerly belonged to the company commanded by Captain, in the regiment commanded by Colonel, in the service of the United States; that his name was placed on the pension roll of the State of, from whence he has lately removed; that he now resides in the State [District or Territory] of, where he intends to remain, and wishes his pension to be there payable in future. The following are his reasons for removing from to :

[Signed]

A..... B.....

Sworn and subscribed to before me, the day and year aforesaid.

C..... D....., J. P.

[Here should be annexed a certificate, to identify the pensioner, by some respectable person.]

[Here the magistrate must certify that the witness is a person of veracity.]

[And here the Clerk of Court, Secretary of State, or other officer, must certify, under his seal of office, the official character of him who administered the oaths.]

A..

APPLICATION WHERE THE PENSION IS TO BE DRAWN BY AN ATTORNEY.

STATE OF, }
County of, } ss.

Be it known, that before me,, a, in and for the county aforesaid, duly authorized by law to administer oaths, personally appeared,

and made oath in due form of law, that he is the identical person named in an original certificate in his possession, of which (I certify) the following is a true copy : (a)

[Here insert a copy of his certificate of pension.]

that he now resides in, and has resided there for the space of years past ; and that previous thereto he resided in ; and that he has not been employed, or paid, in the army, navy, or marine service of the United States from the day of to.....

[Signed]

A..... B.....

Sworn and subscribed this day of, 18..., before me.

C..... D....., J. P.

B.

STATE OF, }
County of, } ss.

....., 18....

I,, a magistrate in the county above named, do hereby certify that I have the most satisfactory evidence, (b) viz:, that, who has this day appeared before me to take the oath of identity, is the identical person named in the pension certificate, which he has exhibited before me, numbered, and bearing date at the War Office, the day of, 18... ; and signed by, *Secretary of War*.

Given under my hand at, on the day and year above written.

C..... D....., J. P.

STATE OF, }
County of, } ss.

I,, clerk of the court, of the county and State aforesaid, do hereby certify that is a Justice of the Peace, in and for said county, duly commissioned and qualified ; that his commission was dated on the day of, 18..., and will expire on the day of, 18..., and that his signature above written is genuine.

Given under my hand and the seal of said county, this day of, 18...

[L. s.]

C..... C....., Clerk.

C.

Know all men by these presents, That I,, of, (c), pensioner of the United States, do hereby constitute and appoint my true and lawful attorney, for me, in my name, to receive from the agent of the United States for paying pensions in, State of, my pension from the day of, 18..., to the day of, 18....

Witness my hand and seal, this day of, 18....

[Signed]

A..... B.....

Sealed and delivered in presence of

[L. s.]

C..... D....., J. P.

(a) Where the pension has been increased since the certificate has been given, the magistrate will note the fact.

In case of a *revolutionary* pensioner, the part of the above form which requires the pensioner to depose that "he has not been employed, or paid," &c., is not required. The law of April 30, 1844, forbids the payment of an invalid pension to any person while in either of the military services, "unless the disability, for which the pension was granted, be such as to have occasioned his employment in a lower grade."

(b) Here state what the evidence is ; whether personal knowledge, or the affidavits of respectable persons, giving their names.

Where the pensioner is personally known to the agent, and he will certify to his identity, the above form (B) may be dispensed with.

(c) In this blank insert the word invalid, or revolutionary, as the case may be.

STATE OF, }
 County of, } ss.

Be it known, That on the day of, 18..., before the subscriber, a in and for said county, duly authorized by law to administer oaths, personally appeared, above named, and acknowledged the foregoing power of attorney to be his act and deed. In testimony whereof I have hereunto set my hand, the day and year last above mentioned.

C..... D....., J. P.

STATE OF, }
 County of, } ss.

Be it known, That on the day of, 18..., before me, a in and for said county, duly authorized by law to administer oaths, personally appeared, the attorney named in the foregoing power of attorney, and made oath that he had no interest whatever in the money he is authorized to receive, by virtue of the foregoing power of attorney, either by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person whatever.

Sworn and subscribed the day and year last above mentioned, before me,

C..... D....., J. P.

D.

APPLICATION BY THE PENSIONER'S GUARDIAN.

STATE OF, }
 County of, } ss.

Be it known, That before me,, a in and for said county, duly authorized by law to administer oaths, personally appeared, guardian of, and made oath in due form of law that the said is still living, and is the identical person named in the original certificate in his possession, of which (I certify) the following is a true copy:

[Here insert a copy of his certificate of pension.]

that he now resides in, and has resided there for the space of years past, and that previous thereto he resided in

....., Guardian.

Sworn and subscribed this day of, 18..., before me.

C..... D....., J. P.

If the application is made by the pensioner himself, the same form will be observed as in applications by an attorney, omitting form C. and the oath of the attorney.

E.

APPLICATION BY A WIDOW.

STATE, [OR TERRITORY] OF, }
 County of, } ss.

Be it known, That before me, a, duly authorized by law to administer oaths, in and for the county aforesaid, personally appeared, and made oath in due form of law, that she is the identical person named in an original certificate in her possession, of which (I certify) the following is a true copy:

[Here insert a copy of her certificate of pension.]

that she has not intermarried, but continues the widow of the abovementioned; and that she now resides in, and has resided there for the space of years past; and that previous thereto she resided in; of the truth of which statements I am fully satisfied.

[Signed]

Sworn to and subscribed this day of, 18..., before me.

A..... B.....

C..... D....., J. P.

F.

APPLICATION BY THE WIDOW OR CHILD OF A DECEASED PENSIONER FOR ARREARS.

STATE OF, }
County of, } ss.

Be it known, That before me,, a in and for the county aforesaid, duly authorized by law to administer oaths, personally appeared and made oath, in due form of law, that she is the widow (or son, or daughter, as the case may be,) of, the identical person who was a pensioner, and is now dead, and to whom a certificate of pension was issued, which is herewith surrendered.

That the deceased pensioner resided in
[Signed]

A..... B.....

Sworn to and subscribed this day of, 18..., before me.

C..... D....., J. P.

G.

POWER OF ATTORNEY FOR THE WIDOW OR CHILD OF A DECEASED PENSIONER.

KNOW ALL MEN by these presents, That I,, of, in the county of, State of, widow, (or child, as the case may be,) of, who was a pensioner of the United States, do hereby constitute and appoint my true and lawful attorney, for me, and in my name, to receive from the agent of the United States for paying pensions in, State of, the balance of said pension from the day of, 18..., to the day of, 18..., being the day of his death.

Witness my hand and seal this day of, 18...

[Signed]

A..... B.....

Sealed and delivered in presence of

[L. s.]

C..... D....., J. P.

H.

CERTIFICATE OF THE COURT AS TO THE DEATH OF THE PENSIONER.

STATE OF, }
County of, }

I,, clerk of the court of, holden at, in and for, do hereby certify that satisfactory evidence has been exhibited to said court that was a pensioner of the United States at the rate of dollars per; was resident of the county of, in the State of, and died in the, in the State of, in the year, on the day of; that he left a widow [or no widow] (or children, as the case may be) whose name is (or are, as the case may be.)

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at, this day of, in the year of our Lord 18...
[L. s.] C..... C....., Clerk of the

If the application be by an executor or administrator, insert their description where "widow" or "child" occurs.

The above are for the payment of money on pension certificates, and are to be presented to the pension agent at the agency where the certificate is payable.

APPLICATION FOR RENEWAL OF A LOST LAND WARRANT.

The following instructions apply as well to Land Warrants under any other act, which the claimant has lost, as to those under 1850:

In all applications for the reissue of land bounty warrants granted under the act of September 28th, 1850, in lieu of the originals which may have been lost or destroyed, the following regulations, approved by the Department of the Interior, will be observed:

When a warrant has failed to reach the hands of the party entitled to receive it, and to whom it was sent, or has been lost after being received, the party should at once enter a caveat in the General Land Office, to prevent the issuing of a patent to a fraudulent claimant, and should give public notice of the facts in the case at least once a week for six successive weeks in some newspaper of general circulation at or nearest the place to which the warrant was directed, or where the loss occurred. In such publication the intention shall also be expressed to apply to the Commissioner of Pensions for a duplicate of such warrant, which, of course, should be minutely described, in order to guard against the improper use of the one first issued.

The identity of the applicant must be satisfactorily established, and the facts upon which the application for the reissue is based must be fully and clearly set forth under oath, the warrantee stating in his affidavit (if such be the fact) that he has never himself located, nor empowered any person to locate for him, the warrant in question.

In cases where the claim for a duplicate is founded upon the non-reception of the original, the agent, if there be one, is required to unite with the warrantee in the application for renewal.

It is requisite that the credibility of each and every affiant be duly certified by the magistrate administering the oath, and that his official character and signature be verified by the proper officer under his seal of office.

FORM OF ASSIGNMENT OF LAND WARRANTS.

GENERAL LAND OFFICE, *March 23, 1852.*

By the first section of the act of Congress, entitled "An act making land warrants assignable, and for other purposes," approved March 22, 1852, it is provided: "That all warrants for military bounty land which have been, or may hereafter be issued, under any law of the United States, and all valid locations of the same, which have been, or may hereafter be made, are hereby declared to be assignable, by deed or instrument of writing, made and executed after the taking effect of this act, according to such form, and pursuant to such regulations as may be prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owners of the warrant or location."

In accordance with the provisions of this section, the following forms are prescribed for the assignment of the warrants and locations referred to, to wit:

1.

FORM FOR THE ASSIGNMENT OF THE WARRANT.

For value received, I, A. B., to whom the within warrant No. was issued, do hereby sell and assign unto C. D., of, and to his heirs and assigns forever, the said warrant, and authorize him to locate the same, and receive a patent therefor.

Witness my hand and seal, this day of, 18....

Attest: E. F.

G. H.

A. B. [SEAL.]

FORM OF ACKNOWLEDGMENT WHERE THE VENDER IS KNOWN TO THE OFFICER TAKING THE ACKNOWLEDGMENT.

STATE OF }
County of } ss.

On this day of, in the year, personally appeared [*Here insert the name of the warrantee*] to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said [*Here insert the name of the warrantee*] is the identical person to whom the within warrant issued, and who executed the foregoing assignment thereof.

(*Officer's signature.*)

FORM OF ACKNOWLEDGMENT WHERE THE VENDER IS NOT KNOWN TO THE OFFICER, AND HIS IDENTITY HAS TO BE PROVED.

STATE OF }
County of } ss.

On this day of, in the year, personally came before me [*Here insert the name of the warrantee*] and [*Here insert the name and residence of a witness,*] and the said [*Here insert the name of the witness*] being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said, that he well knows the said [*Here insert the name of the warrantee,*] and that he is the same person to whom the within warrant issued, and who executed the foregoing assignment, and his testimony being satisfactory evidence to me of that fact, the said [*Here insert the name of the warrantee*] thereupon acknowledged the said assignment to be his act and deed.

(*Officer's signature.*)

2.

FORM FOR THE ASSIGNMENT OF THE LOCATION.

For value received, I, A. B., to whom the within certificate of location was issued, do hereby sell and assign unto C. D., and to his heirs and assigns forever, the said certificate of location, and the warrant and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal, this day of, 18....

Attest: E. F.

G. H.

A. B. [SEAL.]

FORM OF ACKNOWLEDGMENT WHERE THE VENDER IS PERSONALLY KNOWN TO THE OFFICER TAKING THE SAME.

STATE OF }
County of } ss.

On this day of, in the year , personally appeared [*Here insert the name of the person to whom the certificate of location issued*] to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify, that the said [*Here insert the name of the person to whom the certificate of location issued*] is the identical person to whom the within certificate of location issued, and who executed the foregoing assignment thereof.

(*Officer's signature.*)

FORM OF ACKNOWLEDGMENT WHERE THE VENDER IS NOT PERSON-
ALLY KNOWN TO THE OFFICER, AND WHERE HIS IDENTITY HAS TO
BE PROVED.

STATE OF }
County of } ss.

On this day of, in the year, personally came before me [*Here insert the name of the person to whom the certificate of location issued,*] and [*Here insert the name and residence of a witness,*] and the said [*Here insert the name of the witness*] being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said that he well knows the said [*Here insert the name of the person to whom the certificate of location issued,*] and that he is the same person to whom the within certificate of location issued, and who executed the foregoing assignment; and his testimony being satisfactory evidence to me of that fact, the said [*Here insert the name of the person to whom the certificate of location issued,*] thereupon acknowledged the said assignment to be his act and deed.

(*Officer's signature.*)

A P P E N D I X.

SINCE this work went to press, Congress has passed the following acts, enlarging and amending the acts therein described.

An act to repeal the first proviso of the fourth section of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved September twenty-eighth, one thousand eight hundred and fifty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first proviso of the fourth section of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved September 28th, 1850, be and the same is hereby repealed. [Approved, August 4, 1854.]

The effect of this act is simply to admit members of the Congress of 1850 to the benefit of the bounty land act referred to.

An act making appropriations for the support of the army, for the year ending the thirtieth of June, one thousand eight hundred and fifty-five.

SEC. 3. *And be it further enacted,* That the act approved September twenty-eight, one thousand eight hundred and fifty, entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," the act approved March twenty-second, one thousand eight hundred and fifty-two, entitled "An act to make bounty land warrants assignable, and for other purposes," and the act approved February third, one thousand eight hundred and fifty-three, entitled "An act to continue half-pay to certain widows and orphans," shall not be so construed as to deprive any widow from the benefits therein granted for the services of her husband, though she may have married again; *Provided, however,* that the applicant is a widow at the time of making the claim: *Provided,* such party shall not receive pension during coverture.

[This section removes the disability which, it will be found under the appropriate heads, heretofore attached to widows who have remarried after the death of the husbands for whose services they claim.]

SEC. 4. *And be it further enacted,* That the Secretary of War be and he is hereby authorized and directed to receive, and cause to be placed on the files of his department, such additional muster-rolls of the battalion of volunteers commanded by Lieut. Col. J. C. Frémont,

in California, duly authenticated by the proper officers, as have not heretofore been received and filed, and to cause such corrections of the muster-rolls to be made in regard to the periods of enlistment and terms of service, and the omission of names of members of said battalion, as upon satisfactory proof he may deem right and proper, and as far as possible to correspond with the pay-rolls of Major P. B. Reading, paymaster of said battalion, with respect to the period of service; so that all who served in the military service of the United States in California during the late war with Mexico, whether under the command of naval or military officers, may be entitled to all the benefits of the acts of Congress providing for the enrolment of volunteers in the Mexican war: *Provided*, that no payment shall be made in consequence of this section beyond the sum heretofore appropriated.

[Approved, August 5, 1854.]

[The object of this section appears to be merely to grant pensions and bounty lands to Frémont's men under the same conditions under which they have heretofore been granted to volunteers in the Mexican war.]

An act for the relief of the United States troops who were sufferers by the recent disaster to the steamship San Francisco.

SEC. 2. *And be it further enacted*, * * * That the widows and minor children of those officers, non-commissioned officers, and privates, who perished by this disaster, or who died from disease in consequence thereof, shall be allowed pensions in the same manner in all respects as if the said officers, non-commissioned officers and privates had been killed in battle.

[Approved, March 27, 1854.]

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